

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT

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COMMONWEALTH OF MASSACHUSETTS,

v.

KAREN READ.

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* Docket No. 2282CR00117

BEFORE THE HONORABLE BEVERLY CANNONE
TUESDAY, MAY 21, 2024
TESTIMONY OF JENNIFER MCCABE

APPEARANCES:

For the Commonwealth:

BY: ADAM LALLY, A.D.A.
LAURA MCLAUGHLIN, A.D.A.

For the defendant:

BY: DAVID YANNETTI, ESQ.
ALAN JACKSON, ESQ.
ELIZABETH LITTLE, ESQ.

Dedham, Massachusetts
Room 25

Christine D. Blankenship, CVR
Court Reporter/Transcriber

I N D E X

WITNESS:	DIRECT	CROSS	REDIRECT	RECROSS
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Jennifer McCabe (By Mr. Jackson)	6			
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1 (Court in session.)

2 (Defendant is present with counsel.)

3 THE CLERK: 22117, the Commonwealth versus Karen Read.
4 Counsel, please identify yourselves for the record.

5 MR. LALLY: Adam Lally for the Commonwealth. Good
6 morning, Your Honor.

7 THE COURT: Good morning, Mr. Lally.

8 MS. MCLAUGHLIN: Good morning, Your Honor. Laura
9 McLaughlin for the Commonwealth.

10 THE COURT: Good morning, Ms. McLaughlin.

11 MR. JACKSON: Good morning, Your Honor. Alan Jackson
12 for Ms. Read.

13 THE COURT: Good morning, Mr. Jackson.

14 MS. LITTLE: Good morning, Your Honor. Elizabeth
15 Little also on behalf of Ms. Read.

16 THE COURT: Good morning, Ms. Little.

17 MR. YANNETTI: And Good morning, Judge. David Yannetti
18 for Karen Read.

19 THE COURT: Good morning, Mr. Yannetti. Good morning,
20 Ms. Read.

21 So I was told you needed to see me --

22 MR. YANNETTI: Just briefly--

23 THE COURT: -- before the jurors come out.

24 MR. YANNETTI: Briefly.

25 (Sidebar commences:

1 MR. YANNETTI: Your Honor, I want to present this
2 delicately and at sidebar given the nature of the topic
3 here. We've let this go for about a month, and we feel the
4 need to bring it to the Court's attention that continually
5 throughout this trial the O'Keefe family and supporters,
6 who are directly facing the jury in this trial, have been
7 making faces, rolling their eyes, sighing, swearing
8 audibly, and essentially giving input that the jury is
9 readily able to see in light of the fact that we face them.

10 THE COURT: Who specifically because I've been looking
11 around the courtroom and I haven't seen it. So who
12 specifically if you can --

13 MR. YANNETTI: I think it's been multiple members.
14 It's been most egregiously John's mother, Mrs. O'Keefe, and
15 it's been caught on camera. We're not looking for them to
16 be admonished publicly. In fact, just the opposite. Our
17 request would be that a court officer address this issue
18 with them to, you know, let them know that they cannot be
19 giving their reactions that they're giving in light of the
20 fact that they're seeking a neutral jury, and their
21 behavior is contrasted with that of the Read family, which
22 has given no reactions whatsoever. So that's our request.

23 MR. LALLY: I don't know that I'd agree with that last
24 part.

1 THE COURT: Well, so you must have told Jim because he
2 mentioned it to me, so I asked the court officers, and
3 that's part of their job to watch, and they're saying that
4 they're seeing a little bit from both sides, but it's
5 nothing any greater than any other trial, and I will then
6 ask the court officers to pay extra close attention to make
7 sure that there's none of it.

8 MR. YANNETTI: Okay.

9 THE COURT: All right. I did ask.

10 MR. JACKSON: Great.

11 THE COURT: And, you know, I know Ms. Read's family is
12 behind you so you don't see them, and you see the O'Keefe's
13 family because they're next to you.

14 (Music in background.)

15 THE COURT: What was that? While we're here -- oh,
16 that's outside. I thought it was inside. While we're
17 here, I just want to let you all know (c)

18

19

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21

22

23 . I'll just tell the jurors --

24 MR. YANNETTI: Of course.

25 THE COURT: All right. Are you all set?

1 MR. YANNETTI: Yes.

2 end of sidebar.)

3 (Jury in.)

4 THE CLERK: 22117, the Commonwealth versus Karen Read.

5 THE COURT: Okay. Good morning again, Counsel. Good
6 morning again, Ms. Read. Good morning, jurors.

7 I have to ask you those same three questions: Were you
8 all able to follow the instructions and refrain from
9 discussing this case with anyone since we left here on
10 Friday?

11 Everyone said yes and nodded affirmatively.

12 Were you also able to follow the instructions and
13 refrain from doing any independent research or
14 investigation into this case?

15 Everyone said yes or nodded affirmatively.

16 Did anyone happen to see, hear, or read anything about
17 this case since we left here on Friday afternoon?

18 Everyone said no or shook their heads.

19 Thank you very much. May we have Ms. McCabe, please.

20 JENNIFER MCCABE, sworn

21 THE COURT: All right, Mr. Jackson, whenever you Are
22 ready.

23 MR. JACKSON: Thank you, your Honor.

24 CROSS-EXAMINATION

25 BY MR. JACKSON:

1 Q Ms. McCabe, family is important to you, is it not?

2 A Yes.

3 Q As a matter of fact, it's probably fair to say that
4 family is one of the most important things in your life?

5 A Yes.

6 Q You indicated on Friday that you know John O'Keefe or
7 you knew John O'Keefe and you considered him a friend?

8 A Yes.

9 Q You also indicated that you know Ms. Read and at some
10 point you considered her a friend?

11 A Yes.

12 Q But clearly John O'Keefe was not family, was he?

13 A No.

14 Q He was not a McCabe, correct?

15 A No.

16 Q He was not an Albert?

17 A No.

18 Q Karen Read is not family, correct?

19 A Correct.

20 Q She's not a McCabe?

21 A No.

22 Q And she's not an Albert?

23 A No.

1 Q Ms. McCabe, when you were at Waterfall on the evening
2 of the 28th going into the early morning hours of the 29th
3 you spent some time with John O'Keefe and Karen Read?

4 A Correct.

5 Q You didn't see any tension between the two of them at
6 the time?

7 A No.

8 Q As a matter of fact they seemed like a normal couple to
9 you?

10 A I didn't see them interact much.

11 Q They were both engaging with you, correct?

12 A I had separate conversations with them.

13 Q So John O'Keefe we've seen in several videos, I'm not
14 going to play the video, John O'Keefe was situated for the
15 most part over in that corner as the camera is looking, the
16 right corner of the bar along with you, the Kolokithases, I
17 think Matt McCabe was over there, as well, correct?

18 A I can't be sure but I know I spoke to Karen in that
19 corner.

20 Q And certainly you saw nothing to suggest that there was
21 any tension or discord between and among those individuals,
22 certainly between Ms. Read and Mr. O'Keefe, correct?

23 A Correct.

24 Q When you left Fairview were you among the first to
25 leave or among the last to leave?

1 A I left with, there were four of us that left, total.

2 Q Tell me who those were?

3 A Myself, my husband Matt, Julie Nagel and Sarah
4 Levinson.

5 Q When you walked out Karina Kolokithas was close by,
6 close in tow, correct?

7 A Wait, are you talking about leaving the Waterfall?

8 Q Leaving the Waterfall?

9 A Oh, I'm sorry, I was confused. I was talking about
10 Fairview.

11 Q No, that's okay.

12 A Leaving the Waterfall?

13 Q Correct.

14 A Yes, we were one of the last to leave.

15 Q And Ms. Karina Kolokithas was sort of in tow right with
16 you as you're walking out, correct?

17 A Yes.

18 Q And Karen Read, my client, was also heading in that
19 direction, as well, correct?

20 A Yes.

21 Q And you said something to Ms. Read, did you not, as you
22 walked out?

23 A We were in a conversation, yes.

24 Q Did you say specifically, You're coming with me, to
25 Karen?

1 A No.

2 Q You didn't say that?

3 A Not exactly those words.

4 Q What exactly were the words that you used?

5 A I said, Why don't you come with me.

6 Q And you even waited outside in what was ultimately
7 freezing cold temperatures for Ms. Read, correct?

8 A Yes.

9 MR. JACKSON: If you could take a look, your
10 Honor, with the Court's permission, Exhibit 53, I'd like to
11 play about maybe a fifteen second clip from that.

12 THE COURT: Okay.

13 MR. JACKSON: Actually, it's a little bit
14 longer than that. It may be a minute. Could we pause.
15 For the record, your Honor, this is about run time 12:10
16 and 17 seconds or so. If you could move it up, Mr. -- to
17 about 12:10 and 45 seconds. That's close enough.

18 Q (By Mr. Jackson) Ms. McCabe, do you recognize what's
19 depicted in this portion of the video?

20 A I see a car. It's kind of hard to see. I don't know
21 what the white thing is.

22 Q Let's go ahead and play it and see if you recognize any
23 of this?

24 (Portion of Exhibit 53 was played.)

1 MR. JACKSON: Can you pause, please. That's a
2 terrible place to pause. A little further.

3 Q (By Mr. Jackson) It's also not super clear, can you
4 see a person in that video?

5 A From where I'm sitting, no.

6 Q It's a little tough.

7 A Yes.

8 Q Let's just play it forward. Actually, just a little
9 bit, did you see a person in the background right there?

10 A Honestly I don't. I can't make out what that is.

11 Q Let's play it forward and see if it's -- Okay. Now do
12 you see a person?

13 A Yes.

14 Q The lighting is terrible. I apologize. It's not my
15 video. Do you know who that person is?

16 A I don't, no.

17 Q That's you, isn't it?

18 A I can't tell from that picture if that's me.

19 Q Let's maybe play it a little bit further forward.

20 Pause. Now, with the flag out of the way do you recognize
21 anybody in the foreground down at the bottom right?

22 A That looks to be John.

23 Q Mr. O'Keefe?

24 A Yes.

25 Q Do you see someone to his right?

1 A I do, yes.

2 Q Who is that person?

3 A I cannot make her out. I cannot make it out in the
4 photo.

5 Q Let's play it forward. And pause. Do you see the
6 person with the sort of white shoes just about the car?

7 A Yes.

8 Q Does that appear to be you?

9 A I can't make that out that it's me but I know I was
10 there. And I know I spoke with them.

11 Q So you do recall walking outside and sort of waiting
12 and hovering in about that area, correct?

13 A I was talking with them.

14 Q Does it appear that you're talking with them in this
15 frame?

16 A No, it looks like they've walked away.

17 Q Right, as a matter of fact it looks like they walked
18 away without talking to you outside, correct?

19 A Well, do you have video of moments before that when I
20 was standing talking to them?

21 Q This is the point where I get to ask the questions and
22 you need to answer them.

23 A Okay.

1 Q So I'm asking you do you see yourself standing in the
2 parking lot after John and the person to his right had
3 walked away?

4 A Yes.

5 Q Okay, let's play it forward just a few more seconds.
6 Pause. And what do you appear to be doing at that point?

7 A Walking to my car.

8 Q So you turned around and left after Mr. O'Keefe and the
9 person to his right walked away, correct?

10 A Correct.

11 Q As you sit here, even though the video leaves a little
12 to be desired you know that John O'Keefe left with Karen,
13 correct?

14 A Yes.

15 Q So the person to his right, the more petite person with
16 the long hair, that would be Karen?

17 A I would assume.

18 Q So you waited out in the parking lot for a few minutes
19 after you said or joked, You're coming with me, or
20 something like that, correct?

21 A No, I was speaking to them and then I walked to my car.

22 Q You didn't say to Mr. O'Keefe, you're coming with me,
23 you said to Karen Read, You're coming with me, or something
24 to that effect, correct?

1 A Mr. O'Keefe was not outside when I said to Karen,
2 You're coming with me. I told Karen, You're coming with
3 me, because John was still in the bar with Matt.

4 Q So you asked Karen to come with you in your car?

5 A Yes.

6 Q To give her a ride?

7 A Yes.

8 Q Separate from John O'Keefe?

9 A Yes, I figured he could go with Matt because they were
10 still in the bar.

11 Q Was there a reason why you wanted to separate Ms. Read
12 from Mr. O'Keefe at that moment?

13 A No.

14 Q Why not just walk to your car with Matt and go where
15 you're going to go?

16 A Matt was still inside.

17 Q So you thought it was important enough to make the
18 statement, You're coming with me, or something to that
19 effect to my client to separate her from John O'Keefe, even
20 though your testimony is John O'Keefe was just inside the
21 bar, correct?

22 MR. LALLY: Objection.

23 THE COURT: Sustained as to that form. Ask it
24 differently.

25 MR. JACKSON: Sure.

1 Q (By Mr. Jackson) Did you believe it was important at
2 that point to ask Ms. Read to come with you which would
3 separate her from John O'Keefe?

4 A There was never any idea of separating them.

5 Q Except for the fact the idea was, You're coming with me
6 not, You two are coming with me, correct?

7 A Incorrect.

8 Q By definition if she came with you you'd be separating
9 her from John, wouldn't you?

10 A We were standing outside talking.

11 Q My question can be answered yes or no. By definition
12 your statement to her, You come with me would separate her
13 from John, wouldn't it?

14 A It would not because we were all going back to Fairview
15 Road.

16 Q But not at the same time, ma'am, correct? Your idea
17 was to bring Karen with you separate and apart from John,
18 wouldn't it?

19 A We were waiting for John to come out and I said, Why
20 don't you just come with me. It was innocent.

21 Q I'm not asking for your explanation, you'll get to that
22 with Mr. Lally, I'm asking for a yes or no question or a
23 yes or no answer. By definition, your invitation would
24 separate Karen from John, would it not --

25 MR. LALLY: Objection.

1 Q -- for the ride over?

2 THE COURT: Sustained. Move on.

3 Q (By Mr. Jackson) Would it or would it not separate
4 John and Karen for the ride over?

5 MR. LALLY: Objection.

6 THE COURT: Sustained.

7 Q (By Mr. Jackson) Now when you arrived at Fairview some
8 folks were already there, correct?

9 A Yes.

10 Q Who was already there?

11 A Brian Higgins, Brian Albert, Nicole Albert, Caitlin
12 Albert, Julie Nagel, Sarah Levinson and Brian Albert, Jr.

13 Q And then you arrived as we saw, you walked through the
14 parking lot, got in your car, you arrived I presume with
15 your husband, Matt McCabe?

16 A Yes, correct.

17 Q I want to ask a question about Mr. Higgins.

18 A Uh-huh.

19 Q You testified on Friday that you saw his vehicle when
20 you got to the scene, correct?

21 A Yes.

22 Q And you said that it was pulled up a little bit in
23 front of the mailbox, correct?

24 A Yes.

1 MR. JACKSON: Could we have Exhibit 66 with
2 the Court's permission, please.

3 THE COURT: Okay.

4 Q (By Mr. Jackson) This is a digital model of the
5 location, do you recognize this?

6 A Yes.

7 Q Does it appear to be a relative scale model of 34
8 Fairview?

9 A Yes.

10 Q This would be the front door, correct?

11 A Yes.

12 Q Where is the mailbox, if you can point to it with the
13 laser pointer.

14 A (Witness complied)

15 Q Okay, so you're pointing to an area just in front of a
16 car that's in the driveway, correct?

17 A Yes.

18 Q And then the driveway is to the right?

19 A Yes.

20 Q And along this line is the front lawn area and property
21 line of 34 Fairview, correct?

22 A Yes.

23 Q You indicated that that Jeep was just a little bit in
24 front of the mailbox meaning about there, correct?

25 A Yes.

1 Q And the rear end of that Jeep would be butting up
2 against the driveway?

3 A Yes.

4 Q Or at least the line of the driveway, correct?

5 A Yes.

6 Q That's quite a bit of detail about where that Jeep was,
7 would you agree?

8 A No, because I drove down the street and I took a left
9 into the driveway and there was a Jeep there.

10 Q What I'm asking you is you didn't just say, your memory
11 is not just somewhere in front of the house, it's literally
12 right in front of the mailbox, the front end of it
13 adjoining the line of the driveway, correct?

14 A Yes.

15 Q That detail obviously stuck out in your mind?

16 Q It did because I was wondering whose Jeep it was.

17 Q Did you discuss that detail with your husband at any
18 point?

19 A Not sure.

20 Q You're not sure? You might have?

21 A I'm not sure if I said, Whose Jeep is that?

22 Q No, I don't mean then, I mean between then and now have
23 you and Mr. McCabe ever discussed where that Jeep was to
24 your memories of where that Jeep was?

25 A Possibly.

1 Q You're aware that he put the Jeep in the exact same
2 place as you did?

3 MR. LALLY: Objection.

4 THE COURT: Are you aware of that?

5 THE WITNESS: I am. Oh, wait, excuse me.
6 Repeat the question?

7 Q (By Mr. Jackson) You're aware that he puts the Jeep in
8 the exact same spot you just put the Jeep right in front of
9 that mailbox, correct?

10 A I know he knows where the Jeep was. I'm not aware what
11 he said in here.

12 Q Does he know where the Jeep was because you told him
13 what to say about the Jeep?

14 A Absolutely not.

15 Q Okay.

16 A It's because we drove together in the car.

17 Q Got it.

18 A And I asked. I possibly could have asked.

19 Q You gave a statement --

20 THE COURT REPORTER: Let's have one at a time
21 please, ma'am.

22 Q (By Mr. Jackson) Sorry, I didn't mean to step on your
23 words. I thought you were finished.

24 A That's okay. You can continue.

25 Q Thank you. I appreciate that.

1 THE COURT: I don't think we got your answer
2 though. I think Madam Court Reporter was asking for your
3 answer.

4 Q (By Mr. Jackson) Can you repeat your answer?

5 A To the question of did he know where the Jeep was?

6 Q Whether or not you told him where the Jeep was?

7 A I did not need to tell Matt where the Jeep is, was. He
8 knew because we were in the car together.

9 Q But you two discussed it?

10 A When are you asking?

11 Q At any time between January 29th and today?

12 A I'm sure we have, yes.

13 Q You were also interviewed by Trooper Proctor on January
14 29th 2022, correct?

15 A Yes.

16 Q And you were asked a series of open-ended questions:
17 What did you see and where did you see it? Correct?

18 A Yes.

19 Q Nobody put any words in your mouth?

20 A No.

21 Q Nobody told you what to say at that time?

22 A No.

23 Q And you told Trooper Proctor that when you arrived at
24 the scene after you got there you quote, first observed the

1 vehicle, meaning Ms. Read's SUV parked on the street by the
2 driveway facing the direction of Chapman, correct?

3 A Can I, do you have something I can look at to refresh
4 my memory?

5 Q Sure. Do you not have a memory of exactly what you
6 told Trooper Proctor?

7 A Well, I know what I --

8 Q Yes or no, do you need your memory refreshed?

9 A I would like to see what the report says, please.

10 MR. JACKSON: Permission?

11 THE COURT: Yes.

12 MR. JACKSON: Thank you.

13 THE COURT: Yes.

14 Q (By Mr. Jackson) Paragraph 3. This is the face page.
15 You'll review that, especially the highlighted portion.
16 Let me know after you've reviewed it. Just read it to
17 yourself. Does that refresh your recollection?

18 A Yes, I know I told --

19 Q All I'm asking you, I'm so sorry to do that, I don't
20 mean to be rude, I'm just asking does that or does that not
21 refresh your recollection?

22 A Regarding?

23 Q What you said to Trooper Proctor on the 29th?

24 A I know what I said to the Proctor, trooper on the 29th.

25 Q I have to do it this way.

1 A Okay.

2 Q Court rules.

3 A Uh-huh.

4 Q Does that help you with your recollection of what you
5 told Trooper Proctor?

6 A I told Trooper Proctor the car was outside, when I
7 looked at the front door it was straight outside.

8 Q Okay, I can't quite get the answer I'm looking for.
9 The Court is going to require me to ask this question
10 again.

11 A Uh-huh.

12 Q Does that refresh your recollection, yes or no, as to
13 what you told Trooper Proctor?

14 A I did not say this to Trooper Proctor, no.

15 Q So it doesn't help you?

16 A No.

17 MR. JACKSON: May I approach?

18 THE COURT: Yes.

19 MR. JACKSON: Thank you.

20 Q (By Mr. Jackson) So you did speak to Trooper Proctor
21 on the 29th, correct?

22 A Correct.

23 Q And Trooper Proctor asked you some very specific
24 questions about where things were, correct?

25 A Correct.

1 Q He focused on Ms. Read's SUV, didn't he? He asked you
2 questions about where Ms. Read's SUV was?

3 A If you can show me in the report?

4 Q You just read it.

5 A Just off of what I just read is that what you're going
6 off of? Yes?

7 Q I'm asking for your memory, you're testifying.

8 A Yes, so my memory is --

9 THE COURT REPORTER: Your Honor --

10 A -- exactly where the car was.

11 THE COURT: Hold on. So it's very important
12 that both of you, one person at a time speaks.

13 THE WITNESS: Okay.

14 THE COURT: Madam Court Reporter has to do
15 what you're both saying and she can't do it simultaneously.
16 So the best way to do that is Ms. McCabe, just let counsel
17 ask the question --

18 THE WITNESS: Okay.

19 THE COURT: -- and then you answer and if it
20 takes a lot more time than we expect it to take, it does.

21 THE WITNESS: Okay, thanks.

22 THE COURT: So just, go ahead, Mr. Jackson.

23 MR. JACKSON: Thank you, your Honor. I'll
24 slow it down.

1 Q (By Mr. Jackson) Did you talk to Trooper Proctor about
2 where the SUV was?

3 A Yes.

4 Q Thank you. And he asked you questions about where it
5 was situated outside, correct?

6 A Yes.

7 Q And you told him that you first observed it parked on
8 the street by the driveway facing the direction of Chapman,
9 correct?

10 A I told him that when I looked out the front door the
11 car was straight ahead, and yes, it was facing up Chapman.

12 Q You left out a little part by the driveway, correct?

13 A That could have been his interpretation or an error on
14 his part.

15 Q I see.

16 A Uh-huh.

17 Q So Trooper Proctor is wrong about what you said?

18 MR. LALLY: Objection.

19 THE COURT: No, I'll let him have it. Do you
20 think he's wrong about what you said?

21 THE WITNESS: I 100 percent said it was
22 straight out the front door.

23 THE COURT: Okay, next question, please.

24 MR. JACKSON: Thank you, your Honor.

1 Q (By Mr. Jackson) And during the course of that
2 conversation you never once, Ms. McCabe, not once mentioned
3 a several ton Jeep with a snowplow attached to it, did you?

4 A I'm not sure if I did or not.

5 Q If you take another look at the report would that
6 refresh your recollection to see the report?

7 MR. LALLY: Objection.

8 THE COURT: Do you think that will help you?

9 THE WITNESS: I'll take a look at it.

10 THE COURT: Okay.

11 MR. JACKSON: May I?

12 THE COURT: Yes.

13 Q (By Mr. Jackson) I direct your attention again to
14 paragraph 3. You've had an opportunity to review it?

15 A I have, yeah.

16 MR. JACKSON: May I approach, your Honor?

17 THE COURT: Yes.

18 Q (By Mr. Jackson) That looks like a report from Trooper
19 Proctor of your interview, correct?

20 A Correct.

21 Q That interview was taken on January 29, correct?

22 A Correct.

23 Q That interview was taken just a few hours, not days or
24 weeks, hours after the events in question, correct?

25 A Correct.

1 Q And you were asked what you saw, what you observed in
2 front of 34 Fairview on that morning, correct, I'm sorry,
3 the night before, correct?

4 A He asked specific questions about Ms. Read's vehicle.

5 Q Okay, and when you said where you remembered Ms. Read's
6 vehicle being you placed it in the exact spot where you're
7 now saying there was a Jeep with a snowplow on it, correct?

8 A Incorrect. I never placed Ms. Read's car in the spot
9 where Mr. Higgins' vehicle was.

10 Q So if Trooper Proctor was taking notes about what you
11 were saying he got it wrong?

12 A You'd have to ask Trooper Proctor.

13 Q I will, and you never mentioned, according to that
14 report, not one word about a Jeep, right?

15 A I may never have been asked about a Jeep.

16 Q So if you weren't asked about a Jeep you also weren't
17 asked about a Nissan Ultima, did you mention that?

18 A No.

19 Q Right, because what he asked you was what did you
20 observe in front of the house, ma'am, that's what he asked
21 you, wasn't it?

22 A No.

23 Q And you said, I observed her car by the mailbox?

24 A No.

25 Q And you never mentioned a Jeep, did you?

1 A You are not portraying what the conversation was.

2 Q Did you or did you not mention a Jeep sitting right by
3 that driveway to Trooper Proctor, yes or no?

4 A It's not in the report. I don't recall if he asked me
5 about a Jeep.

6 Q Now, following the events of January 28-29, you spoke
7 extensively to Chris and Julie Albert, correct?

8 A What do you mean by extensively?

9 Q Did you speak at all?

10 A Yes, we did.

11 Q Between then and now to Chris and Julie Albert?

12 A Do I speak to Chris and Julie Albert?

13 Q Have you spoken to them about these events between then
14 and now?

15 A About this case? Is that what you're asking?

16 Q Yes, Ms. McCabe, I'm asking about this case?

17 A Of course I speak to them all the time about the
18 vicious harassment we are all receiving.

19 Q That wasn't my question. My question was, did you talk
20 to them about this case, Ms. McCabe?

21 A Yes.

22 Q I realize you want to give additional answers and
23 editorialize. I'm asking you very specific questions.

24 A Uh-huh.

25 MR. LALLY: Objection.

1 THE COURT: Objection as to the form. We've
2 talked about this at side bar, Mr. Jackson.

3 Q (By Mr. Jackson) You've talked to them about the
4 details of that night, correct? The 28th going into the
5 morning of the 29th?

6 A Yes.

7 Q You've talked to them about what happened at the bar,
8 correct?

9 A We spoke about how we were all in the bar and Karen and
10 John came in.

11 Q Is that yes or no?

12 A Yes.

13 Q Okay, and you've spoken to them about your memory of
14 what happened at the house at 34 Fairview that night,
15 correct?

16 A Yes.

17 Q You've spoken to them about who was at the bar, not
18 just what happened, but who was there, correct?

19 A Correct.

20 Q You talked to them about the timing of the night,
21 correct?

22 A I don't think specifically, no.

23 Q When people came to the bar, when they left, when
24 people got to Fairview, when they left Fairview, things of
25 that nature?

1 A Well, they were at the bar so they know who was there
2 and when we left.

3 Q I didn't ask if you know what they know. I'm asking if
4 you've ever spoken to them about these issues, yes or no?

5 A I can't be sure if we've spoken about the timeline.

6 Q And you've talked to them about when they got there and
7 when they left?

8 A I have no idea when they arrived at the Waterfall.

9 Q Once again, Ms. McCabe, that's not what my question
10 was. Did you understand my question? Have you spoken to
11 them about their memory of that night and when they came
12 and left?

13 A They have not shared with me when they got there or
14 when they left.

15 Q In the two years or two-and-a-half years since this
16 event you've had extensive conversations with your friends
17 and family about this circumstance, correct?

18 A Correct.

19 Q That's fair to say?

20 A Yes.

21 Q You've told them your observations, your story,
22 correct?

23 A Correct.

24 Q Your observations of the night?

25 A Correct.

1 Q And they you their observations of the night, correct?

2 A Correct.

3 Q So you all have compared and contrasted your
4 perspectives of what happened that night, correct?

5 A We've tried to figure out what happened to John, our
6 friend.

7 Q And you've talked to them extensively about your
8 observations and what your story or your version is, is
9 that right?

10 A To be honest, not extensively. Speaking about it is
11 very painful and difficult.

12 Q Well, what does extensively mean, more than twice?

13 A Well, you tell me.

14 Q I'm asking the questions, Ms. McCabe, that's how this
15 works. What does extensively mean to you?

16 A I understand but extensively would mean almost every
17 day.

18 Q Do you talk to them almost every day?

19 A I do, but not about the case.

20 Q Do subjects about this case come up every day?

21 A The harassment of the case does, yes.

22 Q What about the specific facts of the case, Ms. McCabe?

23 A No, the facts aren't spoken as much as the vicious
24 harassment is spoken about.

1 Q Understood. So you've told them your version of the
2 events, correct and they've told you their version of the
3 events?

4 A Correct.

5 Q And remind me, Chris and Julie Albert are in fact
6 Colin's parents?

7 A Correct.

8 Q At some point you became aware that your daughter,
9 Ally, was involved in this matter to some extent, correct?

10 A Yes.

11 Q You became aware that there was an extraction of your
12 phone that revealed some data about her whereabouts?

13 A That's not how I became aware of it, no.

14 Q Life 360?

15 A Yes, I know what that is.

16 Q That's what I'm asking you about. You know your phone
17 was extracted, correct?

18 A I willingly handed over my phone.

19 Q Oh, we'll get to that.

20 A Oh, okay.

21 Q You know that your phone was extracted?

22 A Yes, I handed it over.

23 Q And you know that your daughter's whereabouts were
24 revealed based on data on that phone, correct?

1 A That is not how I became aware of my daughter's
2 whereabouts.

3 Q You testified at the state grand jury under questions
4 by Mr. Lally, correct?

5 A Yes.

6 Q You were asked about the Life 360?

7 A Yes.

8 Q Correct? You answered those questions very fluidly?

9 A Yes.

10 Q Yes, I know what Life 360 is. I use it all the time.
11 It's an app, et cetera?

12 A Absolutely.

13 Q Okay, let's go over that for a second.

14 A Uh-huh.

15 Q You admitted that it works as a quote, GPS, as far as
16 where people go and everywhere that you go, correct?

17 A Correct.

18 Q You indicated that it works as a reliable quote/unquote
19 tracking device was your testimony?

20 A Correct.

21 Q You indicated that you rely on it, quote, so you know
22 where your kids are at all times, is that right?

23 A Correct.

24 Q And you even said that it's a quote/unquote, good
25 parenting tool, is that right?

1 A Correct.

2 Q And the reason you said that is because it's accurate
3 in your experience and it's reliable, is that right?

4 A It's a good tool but it is not always accurate.

5 Q But you said when you testified in front of the grand
6 jury that it's accurate and it works as a GPS as far as
7 where you go and everywhere you go, correct?

8 MR. LALLY: Objection.

9 THE COURT: Did you say that?

10 THE WITNESS: Can I see it?

11 MR. JACKSON: Sure. May I approach, your
12 Honor?

13 THE COURT: Yes.

14 Q (By Mr. Jackson) Lines 13 through 15.

15 A You said 13 through 15?

16 Q Yes, ma'am.

17 A Uh-huh. Okay.

18 MR. JACKSON: May I, your Honor?

19 THE COURT: Yes.

20 Q (By Mr. Jackson) Does that refresh your recollection?

21 A It does, yes.

22 Q The question and answer?

23 A I just don't see the word "accurate" on there. I don't
24 know if I missed it.

1 Q Ms. McCabe, does that refresh your recollection as to
2 the question and answer about whether you said it works as
3 sort of a GPS as far as where you go and everywhere that
4 you go?

5 A Correct.

6 Q And your answer was, yeah, correct?

7 A Yes.

8 Q Okay. So where did Ally go after she supposedly
9 dropped off Colin Albert?

10 A She went nowhere.

11 Q Did you check her Life 360 app to verify that she went
12 quote, nowhere?

13 A At that point I had no reason to check her.

14 Q So the answer is no, you didn't?

15 A No.

16 Q Okay. Did you ever verify through the Life 360 app
17 that in fact, Ally did not go home but rather was out
18 driving until after 1:30 a.m., did you ever check the app
19 and see that?

20 A Did I ever check the Life 360 app for that?

21 Q Yes.

22 A No.

23 Q Okay, but you believed her when she said she came home?

24 A Yes.

1 Q And just like you believed her when she said she picked
2 up Colin, dropped him off and then came home?

3 A Yes.

4 Q Okay. The Alberts have a dog, had a dog, pardon me,
5 correct?

6 A Yes.

7 Q What was the dog's name?

8 A Chloe.

9 Q You indicated that on the morning of January 29th after
10 6:00 a.m. it was still relatively dark out, you burst into
11 the bedroom of Brian and Nicole Albert's home, correct?

12 A Yes.

13 Q You did that specifically to wake up, according to you,
14 Brian Albert and Nicole Albert, correct?

15 A Yes.

16 Q Where was Chloe?

17 A I don't know.

18 Q So you'll agree that at least from their perspective
19 you walked in the front door unexpectedly, correct?

20 A Yes.

21 Q You walked upstairs unexpectedly, correct?

22 A Yes.

23 Q It was still dark outside, right?

24 A Yes.

1 Q You walked through their door and you said you burst
2 into the door, into a dark room where they were sleeping,
3 correct?

4 A Yes.

5 Q Mr. Albert said that you were somewhat hysterical,
6 would you agree with that?

7 A Yes.

8 Q You were loud, right?

9 A I was trying to wake them up.

10 Q You were somewhat chaotic?

11 A Yes.

12 Q And you don't remember a 70 pound German Shepard having
13 any reaction?

14 A No.

15 Q As a matter of fact, you don't remember the dog being
16 there at all, correct?

17 A Correct.

18 Q You never saw that dog, correct?

19 A I have no memory of seeing that dog.

20 Q As you sit here today --

21 A Uh-huh.

22 Q -- you cannot say that the dog was here because you
23 don't have a memory of ever seeing it?

24 A I did not see it, no.

1 Q And remind me once again when you were leaving that
2 night, that early morning before --

3 A Uh-huh.

4 Q -- who was the last person to leave, was it Caitlin?

5 A I believe she left after us.

6 Q We've talked about this and I want to get a little more
7 detail about it. You indicated that at some point you
8 looked outside and you saw Karen Read's SUV in front of the
9 house, safe to say, correct?

10 A Correct.

11 Q About what time was that that you first saw it?

12 A I can just give you maybe approximates. I know I
13 texted when I saw them so whatever time that was.

14 Q All right, let's see if we can narrow that down just a
15 little bit.

16 A Uh-huh.

17 Q You also indicated that you saw Ryan
18 Nagel's vehicle outside?

19 A I saw lights.

20 Q Okay, lights belonging to the vehicle, right?

21 A Yes, I knew there was another vehicle outside.

22 Q Where was that in relation to Ms. Read's vehicle?

23 A It was behind it. I didn't pay much attention to it.

24 Q Okay, and where was the Jeep in relation to Ryan
25 Nagel's vehicle and Karen Read's SUV?

1 A I remember seeing Karen Read's SUV straight and then I
2 saw the lights of Ryan Nagel. I did not pay attention to
3 where it was. I just was looking at Ms. Read's vehicle.

4 Q Was Ryan Nagel's vehicle and those lights that you
5 remember, were they in front of the Jeep or behind the
6 Jeep?

7 A I am not certain.

8 Q Haven't you testified previously that you remember the
9 Jeep being between Ryan Nagel's vehicle and the SUV?

10 A I am not certain where Ryan Nagel's vehicle was.

11 Q As you sit here now you don't know if it's in front of
12 the Jeep as you placed it by the mailbox behind the Jeep --

13 A It would be --

14 Q -- let me finish my question behind the Jeep or
15 somewhere in between?

16 A It definitely was not in front of the Jeep.

17 Q It definitely was not in front of the Jeep?

18 A No.

19 Q So it was definitely behind the Jeep?

20 A Behind or to the side, I'm not sure.

21 Q Well, if it's parked on the street in front of the
22 house it's not going to be beside the Jeep right, that's
23 going to be in the middle of the road?

24 A It would have been in the middle of the road, correct.

25 Q Right.

1 A So if it's pulled over it's behind the Jeep.

2 Q Okay, so now we've narrowed that down. It's Karen
3 Read's SUV, as we're looking at the property, Karen Read's
4 SUV, to the right of that as we're looking at it from the
5 street at the property to the right of that Jeep behind
6 that, Ryan Nagel's vehicle, correct?

7 A Correct.

8 Q You're sure about that?

9 A If my memory serves right, yes.

10 Q If your memory serves right, okay. So you were asked
11 about the arrival of Mr. Nagel's car at the state grand
12 jury, do you recall that?

13 A I believe so.

14 Q That was in April, April 26, 2022?

15 A Uh-huh, okay.

16 Q Fair enough. Okay. Does that sound about right? I
17 don't expect you to memorize that date.

18 A Yes.

19 Q You were asked what time did you see Ryan Nagel's
20 vehicle arrive at the location and you indicated that it
21 was 12:23, do you remember that?

22 A Do you have it?

23 MR. JACKSON: I do. May I approach, your
24 Honor?

25 THE COURT: Yes.

1 Q (By Mr. Jackson) Take a look at lines 21 down to the
2 highlighted portions. Let me know when you're done.

3 A Okay.

4 MR. JACKSON: May I, your Honor?

5 THE COURT: Yes.

6 Q (By Mr. Jackson) You were asked, do we know what time
7 the brother came, meaning Ryan Nagel, correct?

8 A Correct.

9 Q And the question from Mr. Lally was, that was front a
10 grand juror, the question from Mr. Lally was, if you know,
11 correct?

12 A Correct.

13 Q And your answer was, I believe he was out front at
14 12:23, is that right?

15 A Correct.

16 Q And the reason you could be so precise with that time,
17 Ms. McCabe, is because you had asked Julie Nagel to give
18 you her text messages with Ryan for that night and you had
19 refreshed your recollection about the time, correct?

20 A Correct.

21 Q All right. And you've also testified that as soon as
22 you saw Ms. Read's SUV you texted John, is that right?

23 A Correct.

24 Q Here, exclamation point, question mark, that was the
25 first text, right?

1 A Correct.

2 Q But your text to John was at 12:27, do you recall that?

3 A Yes.

4 Q That's four minutes after you know Ryan Nagel arrived
5 at the scene, correct?

6 A Correct.

7 Q Since Karen Read arrived before Ryan Nagel she and John
8 had to have been there four to five minutes before you ever
9 saw her SUV, correct?

10 MR. LALLY: Objection.

11 THE COURT: I'll let him have it.

12 Q (By Mr. Jackson) Isn't that right?

13 A Ryan Nagel texted his sister at 12:23 "here" and then
14 he texted again that he was going to leave, then Julie
15 Nagel went outside --

16 Q Ms. McCabe, that's not my question.

17 A I'm explaining what happened in four minutes.

18 Q You can explain at another question. My question is
19 very specific. Given the fact that Karen Read by
20 definition arrived at the location before Ryan Nagel and
21 Ryan Nagel arrived at 12:23 that means, and you didn't
22 notice the SUV until 12:27 that means her car was there for
23 at least four minutes before you ever noticed it, correct?

24 MR. LALLY: Objection.

1 THE COURT: Is that correct? Can you answer
2 that question?

3 A Correct.

4 Q The snow condition, we've heard a lot about the snow
5 condition. I'm not going to beat that dead horse, but it's
6 safe to say you would agree with me that it was a light
7 dusting of snow, correct? I should be specific about the
8 time. It was a light dusting of snow at or around 12:00 to
9 12:30, 12:45, something like that?

10 A It was starting to accumulate.

11 Q Okay, and accumulate means stick to the ground, not
12 just fall and melt, right?

13 A Yes.

14 Q So it was starting like a very thin blanket of white?

15 A Yes.

16 Q You indicated on Friday that you saw some sort of tire
17 tracks, is that right?

18 A On Friday? I don't believe --

19 Q I thought on your testimony to Mr. Lally on Friday your
20 testimony to Mr. Lally on Friday you indicated that you saw
21 some tire tracks, I could be wrong?

22 A Yes, I don't remember that.

23 Q Okay, well, let me ask you, did you see any tire
24 tracks?

25 A At one point, yes.

1 Q Okay, when was that point?

2 A I'm not sure.

3 Q Was it before Ms. Read's vehicle got there, was it
4 after? Let's use that as a barometer first.

5 A I believe it was after Ms. Read's vehicle was there
6 because that's why I was drawn to look outside.

7 Q What did those tire tracks look like, how would you
8 describe them?

9 A Almost like as a wave that went like this, so a --

10 Q Like a half-J?

11 A To my recollection it was almost like started, if Ms.
12 Read's vehicle is here, let's pretend, it was kind of like
13 that.

14 Q You just --

15 A A bit of a wave, so if you started coming towards here
16 it would be more of a wave like this in the road.

17 Q What it sounds like is perhaps, I don't want to put
18 words in your mouth but perhaps what you're describing is
19 tracks in the middle of the road if someone is pulling off
20 parallel it would pull to the right and then stop, and
21 those are the tracks that you saw, that's the wave that you
22 saw?

23 A It wasn't up to her car. It was, it doesn't look like
24 your description.

1 Q Okay, fair enough. Fair enough. I'm just trying here.
2 So if it didn't go up to her car those tracks belonged to
3 somebody else?

4 A Well, when I saw her car it had already moved up.

5 Q Well, wait a minute, you already said that you saw her
6 car it was directly in front of you?

7 A And then it moved at one point.

8 Q That's what I'm asking about. Let's take the point of
9 which you first saw the car?

10 A Uh-huh.

11 Q Is that a yes?

12 A Yes.

13 Q Okay, when you first saw the car --

14 A Uh-huh.

15 Q -- that's when you saw the tire tracks, you just said
16 that?

17 A No, I did not say when I first saw the car I saw the
18 tire tracks.

19 Q I thought you just said a couple of questions ago that
20 you saw the tire tracks because your attention was drawn to
21 her car, that would be the first time you saw her car,
22 correct?

23 A I am saying I saw the tire tracks because I was looking
24 out at her car. I never said when I saw the tire tracks or
25 where her car was when I saw the tire tracks.

1 Q Well, I thought you just said because I asked, when did
2 you see the tire tracks you said, I saw the tire tracks
3 when I looked and saw her car because my attention was
4 drawn to her car and I saw the tire tracks, that would be
5 the first time you looked at her car, correct?

6 A It's not, doesn't have to be the first time I looked at
7 her car.

8 Q Okay.

9 A I looked out multiple times.

10 Q Did you see the tire tracks the second time?

11 A Well, I'm not exactly sure.

12 Q Did you see them the third time?

13 A Again, I'm not sure.

14 Q Okay, so it could have been the first time?

15 A It could have been.

16 Q But they didn't lead to the back tires of her car, did
17 they?

18 A No.

19 MR. JACKSON: Let me have just a moment, your
20 Honor?

21 THE COURT: Yes.

22 Q (By Mr. Jackson) In addition to Trooper Proctor
23 interviewing you on the 29th you also gave extensive
24 testimony on April 26, 2022, in front of a state court
25 grand jury, correct?

1 A Correct.

2 Q And you were asked about the location of Ms. Read's
3 vehicle, I'm still staying with that for just a quick
4 second if you don't mind, is that right?

5 A Correct.

6 Q You were asked where that SUV was in relation to Ryan
7 Nagel's car, is that right?

8 A Would I be able to look at it to refresh my memory,
9 please?

10 Q Well, let's start with this. Do you remember being
11 asked about Karen Read's SUV and Ryan Nagel's truck?

12 A To be honest, I've had a few grand juries so if you
13 could show me what you're talking about --

14 Q Sure.

15 A -- I would greatly appreciate it.

16 MR. JACKSON: If I may have just a moment,
17 your Honor?

18 THE COURT: Yes.

19 MR. JACKSON: May I approach?

20 THE COURT: Yes.

21 MR. JACKSON: I'm trying to speed things up,
22 your Honor. If I may just have a moment.

23 THE COURT: Okay, take your time.

24 MR. JACKSON: May I approach?

25 THE COURT: Yes.

1 MR. JACKSON: Thank you.

2 THE WITNESS: Thank you.

3 Q (By Mr. Jackson) That's the entirety of your state
4 court grand jury.

5 A Okay.

6 Q I'm going to direct your attention to pages 182 to 187.
7 You can probably scan those pretty quickly and just let me
8 know after you scan --

9 A Okay.

10 Q Those pages?

11 MR. JACKSON: May I, your Honor?

12 THE COURT: Yes.

13 MR. JACKSON: Thank you.

14 Q (By Mr. Jackson) Did you have an opportunity to glance
15 at those pages?

16 A I did, yes.

17 Q As you glanced at those pages my question is a
18 relatively simple one but I wanted you to have an
19 opportunity. At no point when you were describing the
20 vehicles that were out front in front of 34 Fairview on
21 that night, at no point under oath in front of that grand
22 jury did you ever mention a Jeep, did you?

23 A I was not asked about any other vehicles out front.

24 Q So when you were talking about the vehicles that you
25 saw in some painstaking detail, talking about the black SUV

1 and Ryan Nagel's truck you just left out the Jeep because
2 nobody asked you about it?

3 A I didn't read anything in that about Ryan Nagel's
4 vehicle.

5 Q Did you miss it?

6 A I must have.

7 Q Okay.

8 A Is it in there?

9 Q Yeah, it is.

10 A Okay.

11 Q You were, in fact, asked about Ryan Nagel's Jeep,
12 weren't you?

13 A If you want to show me.

14 Q Well, I don't want to sit here, did you review your
15 transcript?

16 A I just read it all. I didn't see it.

17 Q Ms. McCabe --

18 MR. LALLY: Objection.

19 Q -- you can't interrupt when I'm talking.

20 A Okay.

21 Q And I will give the same courtesy to you, okay? As you
22 reviewed those pages you were asked about the cars that you
23 saw in front, did you not?

24 A I was asked about Ms. Read's vehicle.

1 Q Okay, and at no point did you mention a Jeep being
2 behind Ms. Read's vehicle as you testified today, correct?

3 A The questions were all about Ms. Read's vehicle.

4 Q At no point, my question is this, yes or no, you did or
5 you didn't, did you mention ever in that grand jury that
6 there was a Jeep behind Ms. Read's vehicle, yes or no?

7 A I'm not sure. I'd have to read it all.

8 Q As you sit here do you recall mentioning the Jeep?

9 A I was asked about Ms. Read's vehicle and those were the
10 questions I answered.

11 THE COURT REPORTER: I can't, you need to keep
12 your voice up, please.

13 THE WITNESS: Sorry.

14 Q Let's try this again. As you sit here do you recall
15 mentioning the Jeep, ma'am?

16 A I would have to re-read the transcript.

17 Q You don't have to re-read the transcript to answer that
18 question. Do you recall mentioning the Jeep? If you
19 don't, you don't.

20 A I may not have been asked about the Jeep so I did not
21 mention the Jeep.

22 Q Fair enough. Did you and Mr. Higgins between then and
23 now, the date of the incident and now have you ever had a
24 conversation with Mr. Higgins about where his Jeep was
25 parked?

1 A No.

2 Q Have you ever had a conversation with Mr. Higgins about
3 anything having to do with this case?

4 A I do not believe so.

5 Q Did anyone leaving Mr. Higgins aside, did anyone tell
6 you anything about Mr. Higgins' Jeep and what he testified
7 to?

8 A No.

9 Q Were you ever asked by anybody to mention a Jeep being
10 behind Ms. Read's SUV in this trial?

11 A Can you repeat the question, please?

12 Q Were you ever asked by anybody to make sure you mention
13 a Jeep being parked behind Ms. Read's SUV in this trial?

14 A Not that I recall, no.

15 Q After you arrived and you noticed this SUV outside you
16 started paying somewhat close attention to it, did you not?

17 A I went to the front door and looked out the window at
18 the vehicle, yes.

19 Q As a matter of fact you texted as soon as you saw the
20 vehicle, at 12:27, "Here" correct?

21 A Correct.

22 Q And then a few minutes later at 12:31 you text, Pull
23 behind me, to John, is that right?

24 A Correct.

25 Q And then at 12:40 you texted, Hello, correct?

1 A Correct.

2 Q And at 12:42 you texted, Where are you?

3 A Correct.

4 Q And at 12:45 you texted, Hello, correct?

5 A Correct.

6 Q So that's five text messages and each time you texted
7 and you were walking to the door and looking out at the
8 vehicle as you're texting, correct?

9 A I know for the first two I was.

10 Q You testified at another hearing, another proceeding,
11 on June 8, 2023, correct?

12 A Correct.

13 Q In that other proceeding did you testify that you got
14 up and sat down and got up and sat down every time you were
15 texting?

16 A Possibly.

17 Q Okay, so if you got up and you walked over to the door
18 and you see the SUV and you text, then you walked away from
19 the door and sit down for a second, that would be one text
20 and one view of the SUV, correct?

21 A Yes.

22 Q So if you did that at 12:27, 12:31, 12:40, 12:42 and
23 12:45 you'd agree that's five times that you were up and
24 down looking at the SUV, correct?

25 A I'm not sure if I did it five times.

1 Q How many times do you think you did do it?

2 A I know I definitely did it the first when I said,
3 "Here" I know I definitely did it when I said, "Pull behind
4 me" because that's when the vehicle had moved up a little
5 bit.

6 Q And did you see the vehicle move up again a second
7 time?

8 A Yes, that's when I told him to pull behind me.

9 Q So that's the first time. Just so we're clear, when
10 you first saw the SUV it was stationary, correct?

11 A When I first saw the vehicle it was straight ahead out
12 the front door stationary.

13 Q And you texted, Here?

14 A Correct.

15 Q Then you walked back over to the window, I'm sorry, to
16 the door, to the storm door and you said, pull behind me,
17 correct, at 12:31?

18 A Correct.

19 Q At that point you saw that it had moved up a little
20 bit, is that right?

21 A Yes.

22 Q So if you saw it move up a second time which you just
23 said you did then that would be a third time that you had
24 to have seen it and texted, correct?

25 A Why would that be the third time?

1 Q Because it only moved once so far, you saw it move
2 twice?

3 A So, the first time I saw it, it was here.

4 Q Correct.

5 A And I said, Here, and then the next time I texted I
6 said, Pull behind me, so that was one time, two times.

7 Q Keep going. You said you saw it pull up again a second
8 time, you said you saw it move twice?

9 A One place to the flagpole to further up.

10 Q Right, so that's three times that you're up to the
11 door?

12 A Okay.

13 Q Is that a yes?

14 A I'm telling you my memory is twice to the door.

15 Q Ms. McCabe, it's not a trick question. You just
16 testified that you saw the car move twice, by definition
17 that has to be you looked at it three times, stationary, it
18 moved once, it moved twice?

19 A Maybe I used the wrong wording.

20 MR. JACKSON: Maybe. If I may have just a
21 moment, your Honor?

22 THE COURT: Sure.

23 Q (By Mr. Jackson) So when you testified in front of
24 this other proceeding didn't you testify that you walked up

1 and sat back down five different times watching that car
2 and texting every single time?

3 A Would you be able to show me that?

4 Q It's going to take a minute.

5 MR. JACKSON: May I have a moment, your Honor?
6 May I, your Honor?

7 THE COURT: Yes.

8 Q (By Mr. Jackson) Take a look at those four pages. For
9 the record that's pages 780-784 --

10 THE COURT: Okay.

11 Q -- Bates stamped. After you've had a chance to review
12 that just look up and let me know.

13 MR. JACKSON: May I?

14 THE COURT: Yes.

15 MR. JACKSON: Thank you.

16 Q (By Mr. Jackson) You had an opportunity, Ms. McCabe,
17 to review those two pages from your testimony in June of
18 2023?

19 A Yes.

20 Q Did you talk about, you were asked about getting up and
21 sitting down and looking at the SUV several different times
22 and texting?

23 A Yes.

1 Q In fact, you indicated that you got up and checked,
2 sorry, go up and looked outside through that storm door
3 several times, correct?

4 A Yes.

5 Q And as a matter of fact you looked every single time
6 that you texted, you indicated that you looked out at the
7 SUV and saw something that prompted you to text something,
8 correct?

9 A Correct.

10 Q And then after the last time which would be five times,
11 five texts, five looks, after the last time you texted you
12 got back up which would be a sixth time and the SUV was
13 gone, just chronologically?

14 A Correct, my husband and I were both getting up and
15 looking so --

16 Q I didn't ask you about your husband.

17 A Okay.

18 Q Just about you, the answer is correct?

19 A Yes.

20 Q Okay. So you're indicating that you were trying to
21 communicate with the occupant of the SUV that was sitting,
22 what would you say, thirty feet outside the front door?

23 A I'm not good with distance.

24 Q It's further than you and I are from each other,
25 correct?

1 A Correct.

2 Q At least double that, right?

3 A Correct.

4 Q Okay, so could you give me maybe yards are easier, like
5 ten yards? Fifteen yards?

6 A Again, I'm not good with measurements.

7 Q Just right outside the front door, though, within --

8 A Straight outside, yes.

9 Q Well, straight outside until it moved?

10 A To the front door. The front door is where it was.

11 Q Ms. McCabe, straight outside until it moved, according
12 to you, correct?

13 A Yes, and then it moved, correct.

14 Q And it moved a second time, correct?

15 A Correct, it moved to the flagpole and then it moved up
16 again.

17 Q Okay, then you indicated that you had an absolutely
18 clear view of the SUV, you were asked those questions,
19 correct?

20 A If I had a clear view?

21 Q A clear view.

22 A I could see the car out front, yes.

23 Q You were asked, you were looking out the front door of
24 the house, your answer was uh-huh. You were asked:

25 (Reading) And there's a window in that door, right?

1 Answer: It was open, yeah. Question: So you had a clear
2 view outside? Answer: A clear view outside, yes. Do you
3 remember that?

4 A Yes.

5 Q Okay, and is that your memory? You had a clear view?

6 A I had a clear view of Karen's vehicle outside, correct.

7 Q Right, and then you reiterated that with the following
8 exchange. (Reading) Question: Was the amount of snow
9 coming down sufficient --

10 MR. LALLY: Objection, your Honor.

11 THE COURT: So let's hear the question.

12 Q (By Mr. Jackson) (Reading) Was the amount of snow
13 coming down sufficient to obstruct your view of the vehicle
14 or did you have a clear view of it? Answer: I had a good
15 view of it.

16 THE COURT: Your objection?

17 MR. LALLY: The objection is to the form of
18 the question, the reading.

19 THE COURT: No, that's okay. I'm going to
20 allow the question.

21 Q (By Mr. Jackson) Was that your testimony?

22 A Yes.

23 Q So not only did you have a clear view, you indicated in
24 your words you had a good view of it, right?

25 A Correct.

1 Q Then you noticed that the SUV was gone after the 12:45
2 text, right?

3 A Correct.

4 Q So you're looking at that SUV over the course of
5 between the beginning text and the end text about nineteen
6 minutes, right? 12:27 or so, to 12:45, eighteen-nineteen
7 minutes, something like that, correct?

8 A Correct.

9 Q Maybe add a minute because you got back up and you
10 didn't text the SUV was gone, right?

11 A Correct.

12 Q So you would agree if we just do some basic math you're
13 looking at that SUV on average about every three, three-
14 and-a-half minutes?

15 A I guess. If you want to pull out the times and you can
16 look at them.

17 Q Well, we talked about the times and you've agreed that
18 you were texting between 12:27 and 12:45?

19 A Correct.

20 Q Right? So if you were just to divide that by five
21 times getting up and looking, I don't know, doing the math
22 in my head, maybe every three minutes or so?

23 A Correct.

24 Q At no time did you hear any noise or sound outside that
25 was unusual that caught your attention?

1 A No.

2 Q You didn't hear any squealing of tires or squealing of
3 brakes?

4 A No.

5 Q You didn't hear any screaming or yelling?

6 A No.

7 Q You didn't hear any loud voices or foul language or
8 doors slam?

9 A No.

10 Q You didn't hear any verbal argument or revving of an
11 engine, anything like that?

12 A No.

13 Q As a matter of fact you didn't hear any collision or
14 crash, did you?

15 A No.

16 Q As a matter of fact the entire time that you looked out
17 at that vehicle with that clear and that good view you
18 didn't see anything out of the ordinary, did you?

19 A No.

20 Q And you would agree with me as you looked at the SUV
21 you're looking over the lawn to the SUV out at the street,
22 correct?

23 A Correct.

24 Q There was no obstruction between you and the SUV,
25 you've already testified to that, is that right?

1 A Correct.

2 Q And you could see everything in your field of view?

3 A Correct.

4 Q And then you saw the SUV gone, it had driven away after
5 12:45?

6 A Correct.

7 Q So I have a question, Ms. McCabe?

8 A Uh-huh.

9 Q Where was the body?

10 A I have no idea. I'm assuming the body was on the front
11 lawn.

12 Q The problem with that is you were looking at the front
13 lawn, weren't you?

14 A I was looking at the vehicle and where it have moved.

15 Q Do you know what field of view is?

16 A Would you like to explain it?

17 Q You had a clear and good view across that lawn to the
18 SUV, didn't you?

19 A When it was straight out, I did, yes.

20 Q You had a clear and good view of that SUV the entire
21 time until it left, didn't you?

22 A I could see the black SUV, correct.

23 Q Nothing was obstructing your vision?

24 A I wasn't looking at the ground.

1 Q I didn't ask you about the ground yet. We'll get to
2 the ground. Nothing was obstructing your vision was it?

3 A No.

4 Q So you had a clear and good, your words, not mine, a
5 clear and good view of the SUV?

6 A Yes.

7 Q And everything in front of it?

8 A I never said everything in front of it. I saw the SUV.
9 It's black. It had its lights on and as it moved I could
10 see it with its lights.

11 Q You had a clear view of everything between you and the
12 SUV, all the things closer to you and the SUV?

13 A I wouldn't say that.

14 Q So your view was obstructed on what was between you and
15 the SUV but not obstructed on the SUV?

16 A That's not what I was saying.

17 Q No, of course not because if you had a clear field of
18 view to the SUV you could see everything in front of it, as
19 well, meaning between you and the SUV as well, right?

20 A If I'm looking straight out at an SUV I'm not looking
21 down at the ground.

22 Q Let me ask you a question about that. You're focusing
23 right now on my face --

24 A Yes.

25 Q -- as you're answering these questions?

1 A Uh-huh.

2 Q You think you'd see, I don't know, an alligator sitting
3 in front of me if it was there?

4 MR. LALLY: Objection, your Honor.

5 THE COURT: Sustained.

6 Q Do you think you would see something, can you clearly
7 see there is nothing between you and me except a podium?

8 A Yes, well, there's a table.

9 Q And you don't have to look down to see that, right?

10 A Correct.

11 Q You're looking directly in my face but you can see
12 things that are between you and me because you have a field
13 of vision, right?

14 MR. LALLY: Objection.

15 THE COURT: I want to see counsel at sidebar
16 for just a minute.

17 Jurors, feel free to stand up and stretch.

18 (Sidebar commences:

19 THE COURT: What's the objection?

20 MR. LALLY: As far as I don't understand the relevancy
21 of what she can see in a lit courtroom versus what she can
22 see when she's looking outside.

23 THE COURT: Okay. So it's relevant, so I'm going to
24 sustain that, but I don't like demonstrations without some
25 heads up beforehand. Are you almost done with this?

1 MR. JACKSON: Almost. I have --

2 THE COURT: It's argument, Mr. Jackson.

3 MR. JACKSON: It's not, Your Honor. This is cross-
4 examination. This such a huge point. She --

5 THE COURT: What do you intend to do?

6 MR. JACKSON: I simply need to have acknowledgment her
7 field of view is unobstructed, and using myself as an
8 example is not argumentative. It's obvious. It's a point
9 of cross-examination. Every single time I get into it with
10 -- and he's doing it for strategic purposes, I get it. But
11 when I get into with them and I'm getting at making points,
12 he stands up and objects to try to undermine
13 (indiscernible) and it's becoming obstructive and abusive.
14 This is cross-examination. I should be given a little bit
15 of leeway --

16 THE COURT: You've been given a lot of leeway. I
17 called you over here because having said argumentative
18 (indiscernible) he did not, but (indiscernible) -- it is
19 argumentative (indiscernible).

20 MR. JACKSON: Yes, Your Honor.

21 end of sidebar.)

22 MR. JACKSON: May I proceed, your Honor?

23 THE COURT: Yes.

1 Q Ms. McCabe, as you looked over that flat lawn with that
2 good and clear view of the SUV you could see the SUV and
3 everything between you and the SUV, correct?

4 A When I looked out the front window I could see the SUV
5 clearly like I'm looking at you right now and it was
6 further away than you are.

7 Q And you did it not once, not twice, not three times,
8 you did it five times and then a sixth after it was gone,
9 correct?

10 A Correct.

11 Q And after that SUV was gone and you looked out that
12 window with that clear and good view there was no body, was
13 there?

14 A I never saw a body.

15 Q Thank you.

16 A I wish I had.

17 Q Sounds like that's a little rehearsed?

18 A Not at all. It's not at all.

19 MR. LALLY: Objection, your Honor.

20 THE COURT: I'll let the answer stand.

21 Q (By Mr. Jackson) You left the location about 1:45, is
22 that right?

23 A Yes.

24 Q You didn't see anything out of the ordinary as you got
25 in, was it your car or Mr. McCabe's car?

1 A It was my car.

2 Q When you got in that SUV of yours you didn't see
3 anything out of the ordinary outside, correct?

4 A I wasn't looking outside.

5 Q Okay. I know that that is the answer that you want to
6 give to every question. My question is yes or no, did you
7 see anything out of the ordinary?

8 A No.

9 Q Thank you. You didn't see anything out of the ordinary
10 when you got in the vehicle?

11 A No.

12 Q You didn't see anything out of the ordinary when the
13 vehicle backed up?

14 A No.

15 Q When that vehicle turned to, I guess it would be to the
16 right I believe towards Chapman and the headlights
17 illuminated the area in front of you, you didn't see
18 anything about of the ordinary then?

19 A I wasn't looking out the front window.

20 Q Again, there is that question, I mean there is that
21 answer. My question is, did you see anything out of the
22 ordinary?

23 A Well, you were asking about the headlights out the
24 front. That's why I said I didn't see anything out there,
25 front.

1 Q You didn't see the headlights turned on?

2 A I was turned to the back.

3 Q Right, did you see that the headlights came on in the
4 car?

5 A Yes, in the driveway the headlights came on.

6 Q Right, and you're seated in the front passenger's seat,
7 right?

8 A Correct.

9 Q So according to you, you got in the car and immediately
10 twisted yourself directly to the rear and never turned back
11 around and never looked out the window?

12 A Correct.

13 Q Got it. Is that normal for you?

14 A Yeah, I'm a very chatty person so I turned to talk to
15 the girls.

16 Q So you made sure you didn't look out the window?

17 A No, that's not it at all.

18 Q You also didn't hear anybody, you did hear some girls
19 in the back because they were chatty talking about bread
20 and sandwiches or something, right?

21 A Correct.

22 Q But you never heard anybody say anything about noticing
23 anything out of the ordinary, correct?

24 A Correct.

1 Q You didn't hear Julie Nagel say that she saw a black
2 object in the yard?

3 A I never heard that.

4 Q But you were turned around, looking right at them
5 according to you, correct?

6 A Correct.

7 Q Indeed, engaging them in conversation, according to
8 you?

9 A Correct.

10 Q So that you could make sure you weren't looking out the
11 front or right windows?

12 MR. LALLY: Objection.

13 THE COURT: Can you answer that? Is that why
14 you did it?

15 A No, that's not why I did it. I was talking to the two
16 girls.

17 Q When you got home what did you do?

18 A I went up to bed.

19 Q What time do you think you got home?

20 A Somewhere after approximately, between 2:00 and 2:15.

21 Q It took you a few minutes to drop the girls off?

22 A Correct.

23 Q When you got home you got on your phone, correct?

24 A Yes.

1 Q Before you got on your phone you went upstairs to your
2 bedroom?

3 A Yes.

4 Q Did you use any applications, well, let me ask it this
5 way first. Did you make any phone calls in using your
6 phone after you got home either downstairs or upstairs?

7 A I do not believe so.

8 Q Did you use any applications to communicate with
9 anybody through Wi-fi, do you know what I mean by that, by
10 Facetime audio or What's App, phone calls, things like
11 that?

12 A Text message?

13 Q No, actually, you may not use these but did you use any
14 kind of third-party app use Wi-fi, DOIP calls other than
15 just a phone call?

16 A No.

17 Q Okay. It sounds like you don't even know what that is?

18 A I don't know what you're talking about.

19 Q Fair enough. So it's safe to say that you didn't use
20 or don't use any multi-media to communicate, you don't use
21 Facetime or Snapchat or Single or anything like that?

22 A I've used Facetime with my children, yes.

23 Q But not for phone calls?

24 A No.

25 Q Facetime audio is the way you can make the call, no?

1 A I've Facetimed with my kids at school.

2 Q Right, that's videos.

3 A Yeah, okay, so I guess not.

4 Q You didn't do that either?

5 A Not that I recall.

6 Q Now I'm going to get back to your question. Did you
7 text anybody?

8 A I did, yes.

9 Q Who did you text?

10 A I texted my sisters and I texted my husband and a
11 friend in a group chat.

12 Q You texted your husband and a friend in a group chat?

13 A Uh-huh.

14 Q Is that yes?

15 A Yes.

16 Q Your husband was home?

17 A Yes.

18 Q I want to switch gears for a second and ask you real
19 quick about later that morning when you went to John
20 O'Keefe's house. You mentioned on Friday that you went
21 into his house and began to look around for him when you
22 first got there with Kerry Roberts and my client, Karen
23 Read, correct?

24 A Yes.

1 Q You indicated you looked in his bedroom and saw that
2 the bed was made, correct?

3 A Yes.

4 Q You indicated that you looked around other parts of the
5 house looking for him, searching for him, is that right?

6 A Yes.

7 Q You obviously saw the blankets and pillows on the couch
8 downstairs in the living room, correct?

9 A I peeked over at the couch.

10 Q And you're aware that Karen Read stayed on the couch
11 that night to wait for John to come home?

12 A I'm not aware of that, no.

13 Q You testified on Friday that my client said at the
14 scene, when you got back to the scene at 34 Fairview just
15 after 6:00 a.m. that she said, I hit him, three times she
16 declared it, correct?

17 A Correct.

18 Q Not once, not twice, three times, I hit him, I hit him,
19 I hit him, correct?

20 A Correct.

21 Q You have a very specific memory of that event, do you
22 not?

23 A I do.

24 Q Obviously that's an incredibly impactful thing for you
25 to remember, is that right?

1 A It was an impactful statement, yes.

2 Q And you remember it today as well you as you remembered
3 it the day she did it?

4 A Yes.

5 MR. JACKSON: If I might have just a moment,
6 your Honor. Thank you. May I?

7 THE COURT: Yes.

8 Q (By Mr. Jackson) I'm going to hand you a document.
9 Before I ask you about that specific document did you
10 review anything in preparation for your testimony today or
11 Friday?

12 A Yes.

13 Q Did you review your grand jury testimony?

14 A I did, yes.

15 Q You did review your grand jury testimony, correct?

16 A Yes.

17 Q So the document in front of you, you recognize it?

18 A Yes.

19 Q That is in fact a true and correct copy of your grand
20 jury testimony that you gave on April 26, 2022, is that
21 right?

22 A Correct.

23 Q You'll agree your testimony in that case, in that
24 hearing, rather, in April of 2022 that was just a few
25 months after the events in question, right?

1 A Yes.

2 Q You were under oath at the time that you gave that
3 testimony?

4 A Yes.

5 Q And you were subject to the penalty of perjury when you
6 were answering those questions, correct?

7 A Yes.

8 Q Ms. McCabe, I'd like you to turn to the page since you
9 reviewed this, turn to the page of that document where you
10 ever said in your testimony that my client said, I hit him,
11 I hit him, I hit him?

12 A Was I asked what she said?

13 Q I get to ask the questions.

14 A Well, I'd like you to direct me where to look.

15 Q I want you to look at the entire grand jury testimony
16 if you need to and turn to the page where you ever said
17 that my client said, I hit him, I hit him, I hit him?

18 A I'm not sure if it's in this document but I can tell
19 you today with 100 percent clarity she said, I hit him, I
20 hit him, I hit him on that morning.

21 Q So it's not in that document, is it?

22 A I'm not sure. If I could take the time and if you want
23 me to read over 200 pages?

24 MR. JACKSON: May I approach?

25 THE COURT: Yes.

1 Q (By Mr. Jackson) No, I don't want to take the time
2 because you just indicated that you reviewed this document
3 in anticipation of your testimony, right?

4 A Correct.

5 Q You've gone over it recently?

6 A A few weeks back.

7 Q So we don't need to read it. You know that you never
8 testified to that at the grand jury in April of 2022, don't
9 you?

10 A I don't know that as a fact. I would have to re-read
11 222 pages or however long it is.

12 Q Do you think you might have missed it when you reviewed
13 your testimony I'm sorry, when you reviewed your transcript
14 in anticipation for your testimony?

15 MR. LALLY: Objection.

16 THE COURT: I'll allow it.

17 A I read it a few weeks ago.

18 Q Probably the most powerful part of your testimony,
19 ma'am?

20 A And I will never forget it.

21 MR. LALLY: Objection.

22 THE COURT: So that's stricken.

23 Q (By Mr. Jackson) Would you agree, you think that's a
24 powerful part of your testimony?

25 MR. LALLY: Objection.

1 THE COURT: I'll allow that.

2 A It is, yes.

3 Q Did you see it in the transcript?

4 A I cannot recall. It's over 200 pages.

5 MR. JACKSON: May I approach, your Honor?

6 THE COURT: Yes.

7 Q (By Mr. Jackson) Ma'am, these are select pages out of
8 your grand jury testimony. Isn't it true, Ms. McCabe that
9 you were asked when you testified no fewer than twelve
10 times what my client said either at the scene or on the way
11 to the scene?

12 A At the scene I was asked twice, according to this.

13 Q My question is, isn't it true that in April of 2022 you
14 testified no fewer than twelve times, twelve separate
15 statements you gave about what my client's statements were
16 either at the scene or in the car ride leading up to going
17 to the scene, do you remember that?

18 A I do.

19 Q Okay, so on page 190 of what you're looking at --

20 A Uh-huh.

21 Q -- it should all be highlighted.

22 A It is.

23 Q You testified that my client said to you over the phone
24 at 4:53 a.m. she asked the question, Did I hit him, do you
25 see that?

1 A I do.

2 Q Number 2 on page 192, talking about when you all were
3 in the car on the way to the scene Karen asked the
4 question, Could I have hit him? Do you see that?

5 A Yes.

6 Q Page 193, lines 1 through 2, you testified that in the
7 car once again she asked the question, Could she have hit
8 him? You're relaying that meaning, Could I have hit him,
9 correct?

10 A Correct.

11 Q Page 193, line 23, in John's driveway she asked the
12 question, Quote: And she's asking if she had hit him?

13 A Yes.

14 Q Page 201, driving to Fairview she asked the question,
15 What if I hit him and could I have hit him, correct?

16 A Correct.

17 Q Page 202, lines 1 through 2, while driving to Fairview
18 she asked the question, Could I have hit him, correct?

19 A Correct.

20 Q Page 208, lines 24 through 25, outside at Fairview she
21 asked the question, Did I hit him? And went on to ask,
22 Could I have hit him, correct?

23 A Correct.

1 Q And your testimony was also on page 208, that Karen was
2 yelling non-stop in front of the female EMT, Did I hit him?
3 Could I have hit him? Is he dead? Correct?

4 A Correct.

5 MR. JACKSON: May I approach?

6 THE COURT: Yes.

7 Q (By Mr. Jackson) That's twelve times that you
8 reiterated under oath, under penalty of perjury in April of
9 2022 what my client's statements were either at the scene
10 or leading up to getting to the scene, correct?

11 A Correct.

12 Q Every single one of those, twelve separate times you
13 indicated that she asked a question something like, Could I
14 have hit him or Did I hit him?

15 A Correct.

16 Q Not one time in that testimony did you say she
17 declared, I hit him, I hit him, I hit him, did you?

18 A The questions that were asked, when she said, I hit
19 him, I hit him, I hit him, that was at the scene in
20 response to an officer asking questions. What I just read
21 was us when she first called me or when we were driving in
22 the car or when we were at John's house, so I was answering
23 the question that I was asked.

24 Q So you believe that you weren't asked the question, Did
25 she say to an officer, I hit him, I hit him, I hit him, and

1 if you're not asked the question, Did she say to an
2 officer, I hit him, I hit him, I hit him, you're not going
3 to volunteer that she said, I hit him, I hit him, I hit
4 him, that's your testimony?

5 A No, that's not --

6 Q What is your testimony?

7 A My testimony is an officer was asking her what his name
8 was and different things about him and at that point she
9 was saying, I hit him, I hit him, I hit him.

10 Q Which officer?

11 A I do not recall.

12 Q Well, you recall the I hit him, you just told me that
13 was the most impactful thing in the morning?

14 A It was, it was shocking.

15 Q So what officer did she say this to, supposedly?

16 A I was more focused on her and her hysteria than which
17 officer was asking the question.

18 Q So you have no idea who the officer was even, right?

19 A I'm not sure which officer was asking her. It could
20 have been an EMT. Someone said, what is his name? Does he
21 have medical conditions? How old is he?

22 Q But you were asked that question, ma'am, on page 208
23 you were asked what she said in front of the female EMT who
24 was asking her questions and her answer was, I'm sorry,

1 your answer was, she said, Did I hit him? Could I have hit
2 him? Is he dead?

3 A Uh-huh.

4 Q Is that right?

5 A That is correct but --

6 Q That would have been a good time to offer up that she
7 confessed, I hit him, I hit him, I hit him, right?

8 MR. LALLY: Objection.

9 THE COURT: Sustained as to that form.

10 Q (By Mr. Jackson) Ms. McCabe, the truth of the matter
11 is you've manufactured this new story for this jury because
12 you think it helps you out?

13 A Absolutely not.

14 Q You called 911 at 6:04 a.m., is that right?

15 A Yes.

16 MR. JACKSON: Your Honor, with the Court's
17 permission Exhibit 36 has already been marked and entered.
18 I would ask to play a portion of that 911 tape, not the
19 entirety of it?

20 THE COURT: Okay.

21 MR. JACKSON: With the Court's permission I'd
22 ask to play about run time 1:30 to 1:45?

23

24 (Portion of Exhibit No. 36 played)

25

1 Q (By Mr. Jackson) Do you recognize the voice on that
2 tape?

3 A Yes, that's mine.

4 Q Does that appear to be a true and accurate, at least
5 that portion a true and accurate recording of the 911 call
6 that you made that morning?

7 A It was a very brief clip. I'd have to hear more.

8 MR. JACKSON: Go ahead and play starting at
9 1:30 to about 1:45.

10

11 (Portion of Exhibit No. 36 played)

12

13 Q (By Mr. Jackson) Was that you?

14 A Yes, that was.

15 Q Is that the 911 call?

16 A Yes, it was.

17 Q What did you just say?

18 A I said, I don't know, he got out of the car.

19 Q He got out of the car --

20 A Uh-huh.

21 Q -- is what you said, correct?

22 A And this was at 6:03 in the morning, correct?

23 A Correct.

24 Q This was before you ever talked to Brian Albert?

25 A Correct.

1 Q Before you ever talked to your sister, Nicole Albert?

2 A Correct.

3 Q Before you ever talked to Chris Albert?

4 A Correct.

5 Q Before you ever talked to Julie Albert?

6 A Correct.

7 Q You hadn't talked to anybody at this point other than
8 Kerry Roberts, correct?

9 A And Karen Read.

10 Q And my client?

11 A Correct.

12 Q And in that 911 call you said he got out of the car,
13 didn't you?

14 A I did, because Karen Read had told me that she had left
15 him there.

16 Q Your words were, he got out of the car, correct?

17 A Correct.

18 Q Did you make any other calls other than to 911?

19 A I called my sister.

20 Q What time was that?

21 A I believe it was after the 911 but I'm not sure.

22 Q You claim that your sister didn't answer, is that
23 right?

24 A She did not answer.

1 Q But you do know that your extraction shows that that
2 was an answered call at 6:07?

3 A If that's what it shows but I can tell you that she did
4 not answer the phone.

5 Q And you are as sure about that as you are as my client
6 said, I hit him three times, right?

7 A I certainly am, yes.

8 Q Okay, you also called her at 6:08?

9 A I might have called her twice, yes.

10 MR. JACKSON: Your Honor, I have an exhibit.
11 This may be as good a time as any for a break if you wish.
12 I just have to queue it up. It's up to you. I don't mind.

13 THE COURT: Folks, we'll take our morning
14 break.

15 THE COURT OFFICER: All rise. Jury exiting.
16 Follow me.

17

18 (Jury exited courtroom)

19

20 THE COURT OFFICER: Please be seated.

21 THE COURT: So Mr. Jackson, when you said it's
22 an exhibit is it in evidence?

23 MR. JACKSON: It's not.

24 THE COURT: Okay.

1 MR. JACKSON: I ask to mark it. It's a
2 digital recording of a four minute voice mail on John
3 O'Keefe's phone. It does include the 911 call. I will not
4 play the entirety of the 911 call but I do want to play the
5 entirety of this particular four minute voice mail.

6 THE COURT: Do you know what it is, Mr. Lally?

7 MR. LALLY: I do.

8 THE COURT: Okay. Is there an agreement that
9 it's coming in?

10 MR. LALLY: There's no objection to it.

11 THE COURT: Okay. All right. I just needed
12 to know it if would make sense for me to review it if there
13 was an objection. Thank you.

14 THE COURT OFFICER: All rise for the Court,
15 please.

16 (Recess at 10:53 a.m.)
17
18
19

20 (Court and Jury Entered at 11:19 a.m.)

21 THE COURT OFFICER: Thank you. You may be
22 seated. Court is in session.

23 THE COURT: So Mr. Jackson, is it all queued
24 up or do we need the, well, we need witness, were there
25 any questions first or are you going right to the video?

1 MR. JACKSON: I'll ask a few questions first
2 and then I'll ask --

3 THE COURT: Let's bring Ms. McCabe in.
4

5 JENNIFER MCABE-RESUMED STAND
6

7 THE COURT: Okay, whenever you're ready, Mr.
8 Jackson.

9 MR. JACKSON: Thank you, your Honor.

10 Q Ms. McCabe, I want to go back very briefly to something
11 you said just before we broke and that was in respect of
12 the statements that you attribute to my client at the scene
13 you said, well, there was an officer possibly asking
14 questions or it could have been a female EMT, I wasn't
15 answering questions about that, correct? Hence, you didn't
16 say, I hit him, I hit him, I hit him?

17 A Can you be clearer on your question?

18 Q Let me rephrase that. Before we broke a few minutes
19 ago you had said the reason I didn't say I hit him, I hit
20 him, I hit him was because I was never asked but never came
21 up what an officer asked her when she declared that you
22 didn't offer it or you said it could have been an EMT?

23 A Yes, I'm unclear who was there.

24 Q Isn't it true that at the grand jury the question that
25 was posed to you and Counsel, this is page 208 in the grand

1 jury, the question was posed to you quote, (Reading) So
2 where does, what happens next with yourself, Ms. Roberts
3 and Ms. Read? And your answer was, (Reading) So there
4 was, you know, different police officers getting statements
5 from us. At one point I'm standing with Ms. Read and she
6 is saying, Did I hit him? Could I have hit him? And there
7 was I believe, an EMT, a female standing right next to me
8 and listening to her yelling, Did I hit him? Could I have
9 hit him? Is it dead? Is he dead? It was pretty much non-
10 stop. Do you remember that testimony?

11 A I do.

12 Q So in point of fact you were answering the direct
13 question about what happened in front of the police officer
14 and the EMT, correct?

15 A There were multiple police officers and multiple EMTs
16 present.

17 Q So now this is another police officer and a different
18 EMT?

19 A I'm not saying that.

20 Q Okay, but nowhere in this did you say she declared the
21 words, I hit him, correct? We'll agree on that?

22 A Correct.

23 MR. JACKSON: Your Honor, I have an item I
24 would like to have marked in next order --

25 THE COURT: Okay.

1 MR. JACKSON: May I approach?

2 THE COURT: Yes.

3

4 (Thumb drive with voice recording, Marked, Exhibit No.
5 96.)

6

7 MR. JACKSON: With the Court's permission I
8 would like to play a portion of this and then stop it.

9 THE COURT: Okay.

10 MR. JACKSON: And ask the witness a couple of
11 questions about it. It's audio only.

12 (Exhibit No. 96 played.)

13 MR. JACKSON: Would you stop it.

14 Q (By Mr. Jackson) Ms. McCabe, I paused the audio tape
15 just to ask you a couple of foundational questions. Do you
16 recognize what's on that audio tape?

17 A Yes, that is my voice.

18 Q Okay. You recognize you starting a 911 call, correct?

19 A Correct.

20 Q Similar the call we just listened to a few minutes ago
21 which would be the actual 911 call, correct?

22 A What's the difference between the two of them?

23 Q I'm about to explain it. It's a confusing question and
24 I apologize. This appears to be an open voice mail
25 overhearing your 911 call, do you recognize that?

1 A Now that you explain it, okay.

2 Q You hear a rhythmic boom-boom-boom?

3 A The windshield wipers.

4 Q So that would have been, that was my next question,
5 that would have been an open voice mail that was recording
6 inside the cab of the SUV that you were seated in?

7 A Correct.

8 Q Overhearing you called 911 and overhearing whatever
9 else was going on and the noise at the scene, correct?

10 A Correct.

11 Q Does it sound like a true and correct copy of at least
12 the portion of the 911 call that you heard?

13 A I'd have to listen to it again, but.

14 Q Why don't we continue listening to it and see if you
15 recognize it?

16 A Okay.

17 MR. JACKSON: With the Court's permission?

18 THE COURT: Yes.

19 MR. JACKSON: It's about four minutes in
20 total, your Honor.

21 THE COURT: Okay.

22 (Exhibit No. 96 was played)

23 MR. JACKSON: Can you pause it?

24 Q (By Mr. Jackson) Do you hear a person in the
25 background screaming?

1 A Yes.

2 Q Who is that?

3 A Miss Read.

4 MR. JACKSON: Can you play it?

5

6 (Exhibit No. 96 was played)

7

8 Q (By Mr. Jackson) Did you hear the audio recording we
9 just marked into evidence?

10 A I did. It was very muffled and some parts were very
11 hard to understand.

12 Q Understood. The person on the phone, who was that
13 person?

14 A I called 911.

15 Q And the person that was, for the most part the person's
16 voice you could hear screaming hysterical, who was that?

17 A Karen.

18 Q Did you also hear Kerry Roberts' voice at various times
19 in the background?

20 A Yes.

21 Q She was, for lack of a better word, trying to calm
22 Karen down?

23 A Yes.

24 Q At some point telling her to just shut up, you're not
25 helping?

1 A Yes, exactly.

2 Q She was so hysterical and so upset?

3 A Erratic.

4 Q I want to play the rest of this. It appears that this
5 recording is longer than your 911 call, you would agree
6 with that?

7 A I'd have to see.

8 Q Well, the 911 call had already ended, correct?

9 A I'm not sure. How long was the 911 call?

10 Q Okay. This is about three-and-a-half minutes into a
11 four minute recording. My only question is would you agree
12 that the 911 call is subsumed within this full four minute
13 recording?

14 A I couldn't make that from that muffled.

15 Q You couldn't tell?

16 A I couldn't tell. So if you have my phone record you
17 could, I'm assuming, tell when the 911 call ended because I
18 know the 911 call was long because, you know, they had
19 transferred me multiple times.

20 Q Right. My question to you is I'd like you to listen
21 very, very closely and I know it is a muffled recording by
22 definition it might be -- from this point forward I want
23 you to pay very close attention. I want to ask you if you
24 hear a voice very muffled towards the end of this
25 recording.

1 MR. JACKSON: Can I play it with the Court's
2 permission?

3 THE COURT: Yes.

4 (Exhibit No. 96 was played)

5 MR. JACKSON: Stop.

6 Q (By Mr. Jackson) Did you hear a muffled voice in the
7 foreground after you heard Ms. Read scream or yell?

8 A I heard two people talking.

9 Q And one of those was a very muffled voice on this
10 recording, correct?

11 A Most of the recording was muffled.

12 Q The one I'm talking about I just played
13 the voice that was muffled in the
14 foreground of the audio recording for want
15 of a better phrase?

16 A Yes.

17 Q You heard that?

18 A I heard that, yes.

19 Q Was that you?

20 A I don't know if that was me.

21 Q There was nobody else in the cab of the car with you,
22 was there?

23 A I was standing at the trunk of the car.

24 Q Kerry Roberts was over by Mr. O'Keefe?

25 A Yes, they were kind of running back and forth at times.

1 Q And Karen was over by Mr. O'Keefe for most of that?

2 A Yes.

3 Q But you were the one by the car?

4 A Back and forth, uh-huh.

5 Q You called Nicole, your sister? By the way, can we
6 finish playing this? Okay, thank you.

7

8 (Exhibit No. 96 was played)

9

10 Q (By Mr. Jackson) Okay, that appears to be the end of
11 the tape?

12 A Okay.

13 Q Okay. You called your sister at 6:07 and 42 seconds,
14 correct?

15 A I don't have my phone record in front of me.

16 Q Does that sound about right?

17 A Approximately.

18 Q And you made a second phone call at 6:08 and 17
19 seconds, does that sound about right?

20 A I did call her twice, yes.

21 Q And both of those calls show in your extraction that
22 they were answered phone calls, correct?

23 A I don't have my extraction in front of me.

1 Q Well, you've been asked this question a bunch times,
2 right? You were asked this question at the other
3 proceeding, is that right?

4 A Yes.

5 Q And the cell phone record?

6 A If you have them I can see them here.

7 Q You were shown phone records then?

8 A Yes.

9 Q And at that time you were confronted with the fact that
10 the phone records show a seven second call for 6:07,
11 correct?

12 MR. LALLY: Objection.

13 THE COURT: I'm going to strike the word
14 confronted. Go ahead and ask --

15 MR. JACKSON: I'll pick another word.

16 THE COURT: Go ahead and ask the question.

17 Q (By Mr. Jackson) You were shown evidence that the 6:07
18 call lasted seven seconds?

19 A My sister never answered the phone.

20 Q Okay, I know you want to answer your own questions.

21 A Yeah.

22 Q I'd like you to answer my question. Were you shown
23 records that show the called lasted seven seconds?

24 A I cannot recall the exact record I was shown but I was
25 shown a phone record.

1 Q Okay, and the same record showed that the 6:08 call
2 lasted eight seconds, correct?

3 A Again, I don't have it in front of me.

4 Q Does that sound about right?

5 A About right. There were a number of other calls that
6 showed answered that weren't answered.

7 Q We'll get to those in a minute. The two calls at 6:07
8 and 6:08 at least the records indicate about fifteen
9 seconds worth of open line time, talk time, seven seconds,
10 eight seconds, right?

11 A You have the record in front of you, I don't.

12 Q I'm just asking if you were confronted, there's that
13 word again, shown records that established that based on
14 your own phone extraction, your phone records that the 6:07
15 call the seven second call, the 6:08 call the eight second
16 call, right?

17 A I was shown records but I don't know exactly what they
18 were, how long the call said because she never answered the
19 phone regardless.

20 Q You also made another phone call at 6:23, did you not,
21 to Brian Albert?

22 A If you could share my phone record it would be very
23 helpful.

24 Q Do you recall it?

1 A I know I called my sister and I called my brother-in-
2 law in the house. I do not know the exact times.

3 Q That's all I'm asking. You made a phone call to Brian
4 Albert, as well, right?

5 A I believe so.

6 Q That was around 6:23. It was a few minutes after you
7 had called Nicole twice, right?

8 A Correct.

9 Q And that call was not answered?

10 A None of them were answered.

11 Q But the records showed that that call was not answered,
12 as opposed to Nicole's two calls, right?

13 A Right.

14 Q Okay. The calls to Nicole were deleted from your phone
15 before you turned that phone into law enforcement, weren't
16 they?

17 A Not by me.

18 Q By somebody else?

19 A I never deleted any calls when I willingly handed my
20 phone over.

21 Q You claim that you didn't delete calls but you do know
22 your phone was forensically analyzed and those calls were
23 in the deleted file folder, right?

1 A I have seen that but there were twenty calls all in a
2 group that were all deleted so cherry picking a few makes
3 it look a different way.

4 Q So we'll get to those. I'm not cherry picking
5 anything, Ms. McCabe.

6 A Uh-huh.

7 Q I'm just asking questions about the records.

8 A Which I would love a copy of if I could see.

9 Q We'll get to that in a second. You're just going by
10 your memory. You've seen these records a bunch of times,
11 you've been questioned about these records a bunch of
12 times, right?

13 A Yes.

14 Q So we know that you called at 6:07, 6:08 or thereabouts
15 and about 6:23, two to Nicole, one to Brian, correct?

16 A Correct.

17 Q And you'll agree with me that notwithstanding those
18 calls, by the way, did you leave voice mails?

19 A No.

20 Q When did you hang up, before it went to voice mail or
21 was it into voice mail before you hung up?

22 A It was a bit of a hysterical scene that morning and I
23 was in a state of shock and I was just calling my sister
24 and by brother-in-law. They did not answer the phone.

1 I cannot tell you when I hung up because it was
2 a hysterical scene. I was in a state of shock. Everyone
3 was running around and what seems to be forgotten is that
4 my friend was lying there on the ground.

5 Q I don't think anybody has forgotten that. You, in
6 fact, did not leave voice mails for any of those three
7 calls, do you?

8 A Again, I don't have my phone record in front of me.

9 Q That's because Nicole didn't get any voice mails
10 because the calls were answered, right?

11 A The calls were not answered.

12 Q You agree with me that Brian and Nicole Albert, Brian
13 Albert being a police officer, never came out of the house,
14 correct?

15 A Correct, neither did any neighbor.

16 Q I know you'd like to continue editorializing --

17 A Uh-huh.

18 Q -- after the fact, there's probably a time and a place
19 for it. This isn't it. If you can answer my question I'd
20 ask that you do that. Did Brian Albert come out of the
21 house?

22 A No.

23 Q Did Nicole Albert come out of the house?

24 A No.

1 Q Thank you. How many of the initial police officers
2 from Canton Police Department who responded to the scene
3 were you friends with?

4 A I would say I am friendly with Mike Lank. He was five
5 years older than me. I knew him, I knew of him growing up.
6 If I saw him around town I would say, Hey, how are you?
7 Pretty much that's the extent.

8 Q Anybody else other than Mike Lank that you were friends
9 with?

10 A Not that I am friends with. I knew of Officer Sean
11 Goode but I wouldn't say I was friends with him. I just
12 knew who he was.

13 Q And you also knew that Officer Lank was very good
14 friends with the Albert family?

15 A Good friends, yes.

16 Q You knew that Mike Lank and Chris Albert had a long
17 time, long standing friendship?

18 A Correct.

19 Q You had just indicated you knew Officer Goode, is that
20 right?

21 A Didn't know, I said I knew of him.

22 Q With regard to names like Saraf Blaine, not so much?

23 A Saraf has a sister that's the same age as my sister but
24 I had never, to my knowledge, met Saraf.

1 Q And of all the officers who responded to the scene the
2 two who actually went inside the Albert home to talk to
3 Brian Albert and others was in fact Mike Lank and Officer
4 Goode?

5 A I don't remember Officer Goode in the house. I only
6 remember Officer Lank.

7 Q The reason you know that, the reason you have a memory
8 of what was happening inside the house was because you were
9 allowed to actually go into that home, correct?

10 A Correct.

11 Q And you went into that home before any of the officers
12 went into the home?

13 A Correct.

14 Q Is that right?

15 A Correct.

16 Q You were allowed to have private conversations with
17 Brian Albert?

18 A I woke Brian Albert up.

19 Q Were you allowed to have private conversations with
20 Brian Albert?

21 A Yes.

22 Q And you were allowed to have private conversations with
23 your sister, Nicole?

24 A Yes.

1 Q And that was before the police ever went into to do any
2 formal interviews of you, Brian or Nicole, correct?

3 A Correct.

4 Q Did you discuss in these private conversations how you
5 three were going to answer any questions for the police
6 when you were asked?

7 A No.

8 Q Did you talk about what you were going to say in any
9 respect?

10 A We were in shock. There was no --

11 Q Yes or no?

12 A No.

13 Q Did you talk about what Brian and Nicole were going to
14 say in their interviews with the police?

15 A No.

16 Q Did Brian Albert give you any advice as a police
17 detective what you should do or say when you were
18 interviewed?

19 A No.

20 Q Did he give you any advice as a police detective what
21 you should do with your cell phone?

22 A No.

23 Q Did he tell you that the police might want to get a
24 hold of your cell phone at some point?

25 A No.

1 Q Did you two discuss the calls that you made to Nicole
2 Albert at 6:07 and 6:08 and the call that you made to Brian
3 Albert at 6:23?

4 A No.

5 Q Did you ever discuss the idea of eventually deleting
6 any of those calls that were made in that early morning?

7 A Absolutely not.

8 Q Would you tell us if you did?

9 A Yes, because I'm an honest and truthful person.

10 Q Did you tell him which officers were outside?

11 A I don't recall.

12 Q Did you tell them that Officer Lank, specifically, a
13 friend of the Alberts was outside?

14 A I don't recall.

15 Q And then your husband Matt McCabe arrived at the scene,
16 correct?

17 A Correct.

18 Q He was allowed to come in the house as well, right?

19 A I believe Officer Lank was in the house before Matt
20 came into the house.

21 Q And a little bit later that morning Julie Albert came
22 over, correct?

23 A Correct.

24 Q By the way Officer Lank after just a few minutes had
25 left the house, correct?

1 A Correct.

2 Q Leaving all the witnesses inside together?

3 A Correct.

4 Q And I can't remember if I asked this question or if I
5 thought of it out loud, did Julie Albert come over?

6 A She did.

7 Q And then Chris came over?

8 A Yes.

9 Q Even Brian Higgins came over?

10 A Correct.

11 Q These are all friends and family of yours, correct?

12 A No, Brian Higgins I had only met a handful of times.

13 Q But you'd consider him a friend?

14 A A friend of Brian Albert's is how I would reference
15 him.

16 Q Fair enough. So these are friends and family of Brian
17 Albert?

18 A Correct.

19 Q And everyone was permitted to discuss the circumstances
20 of the evening before going into the early morning house
21 with each other with no police there, correct?

22 A I sat with my family in shock and horror.

23 Q Were you allowed to discuss the circumstances of the
24 night before going into the early morning hours amongst
25 yourself without the police present, yes or no?

1 A There was no reason for us to be allowed or not
2 allowed. We did nothing wrong.

3 Q Stay with my question. Did you get it?

4 A Yes, I understand your question.

5 Q Just answer it yes or no. Would you allow that group
6 of folks, were you allowed to discuss the case without a
7 police presence?

8 A Yes.

9 Q Okay. So you listened during that friends and family
10 gathering, you listened to what Brian Albert had to say,
11 correct?

12 A He didn't really say much.

13 Q He was able to listen to what you had to say?

14 A Again, you're creating a scene that didn't happen.

15 Q I'm not creating anything, Ms. McCabe. I'm asking some
16 questions that you don't seem to want to answer.

17 MR. LALLY: Objection, your Honor.

18 THE COURT: All right, so let's ask a question
19 and let's get an answer, okay?

20 THE WITNESS: Uh-huh.

21 Q (By Mr. Jackson) Yes or no, was Brian Albert there
22 within earshot when you discussed your version of what had
23 happened?

24 A I didn't discuss much. I sat there in shock and horror
25 so I spoke very little, to be honest with you.

1 Q When you did speak he could hear?

2 A Yes.

3 Q And Nicole could hear?

4 A Yes.

5 Q And Chris could hear?

6 A Chris came much later.

7 Q And your husband, Matt McCabe, he could hear?

8 A Yes.

9 Q When Chris was talking about what happened at Waterfall
10 you could hear and Brian could hear, everybody could hear
11 everybody?

12 A Chris came much later. When Chris came I was almost
13 about to leave.

14 Q I'm guessing that the topic of what had happened was
15 still on everybody's mind here?

16 A Everybody was trying to figure out what had happened.

17 Q And you were discussing it amongst yourselves, that's
18 my point?

19 A With my sister and my brother-in-law and my husband,
20 correct.

21 Q Before you left, you said you were about to leave,
22 before you left another Albert came over to the house,
23 correct?

24 A I don't recall seeing him.

25 Q Who is him?

1 A Kevin Albert.

2 Q How did you know I was talking about Kevin Albert?

3 A Because you said another Albert came over and I was --

4 Q There are six brothers?

5 A I was told later it was Kevin.

6 Q I see. So you believe Kevin was not there when you
7 were still there?

8 A I was in a state of shock. He may have walked in.

9 Q Do you remember?

10 A I don't remember it, no.

11 Q He could have been?

12 A He could have been, absolutely.

13 Q And you knew he was a Canton police officer?

14 A Yes.

15 Q You had already gotten a call from Michael Proctor,
16 hadn't you?

17 A Yes.

18 Q He told you he wanted to speak with you?

19 A Correct.

20 Q So you knew at that point that the Massachusetts State
21 Police troopers had taken over the investigation of the
22 case, correct?

23 A Correct.

24 Q Did Michael Proctor tell you that the Canton Police
25 Department had been recused from the case?

1 MR. LALLY: Objection.

2 THE COURT: Sustained.

3 Q (By Mr. Jackson) Let me ask it a different way. Did
4 you have knowledge in any way in any form or fashion at
5 that point that the Canton Police Department was not
6 supposed to be involved in the case?

7 MR. LALLY: Objection.

8 THE COURT: Sustained.

9 Q (By Mr. Jackson) Speaking of Trooper Proctor, when you
10 first interviewed with him that was January 29, 2022, we've
11 already discussed that a little bit today, correct?

12 A Correct.

13 Q And he was taking notes while you were interviewing
14 with him, is that right?

15 A I believe so.

16 Q You mentioned on Friday your observations of the
17 taillight that day, is that right?

18 A Correct.

19 Q You told Mr. Lally that you indicated that the
20 taillight looked, when you saw it, just like the photograph
21 that he showed you, correct?

22 A I told him it was hard to make out and with the snow on
23 it but it looked, in the picture that he showed.

24 Q He showed you a second photo, a close-up?

25 A Uh-huh.

1 Q Basically of the SUV in the sallyport?

2 A Uh-huh.

3 Q Is that right?

4 A Yes.

5 Q And you said, Yeah, that's the condition of the
6 taillight, correct?

7 A Yes.

8 Q You also told Trooper Proctor about your observations
9 of the taillight on that same day, the 29th, right?

10 A Correct.

11 Q That's literally the same day that you saw the
12 taillight, right?

13 A Correct.

14 Q Just a few hours later, is that right?

15 A Correct.

16 Q And what you told Trooper Proctor that day was that you
17 Quote, saw a crack in it, End quote, correct?

18 A I told him that the taillight was cracked.

19 Q The words that you used were that you saw and I'm not
20 fighting you over those words, you saw that it was cracked,
21 you actually said, I saw a crack in it, correct?

22 A That's what he said I said. I'm telling you I said the
23 taillight was cracked.

24 Q This is another example of him screwing up your words,
25 correct?

1 A You'd have to ask Trooper Proctor.

2 Q So I'm asking you, did you say, I saw a crack in it?

3 A I said the taillight was cracked.

4 Q So you didn't say I saw a crack in it, right?

5 A I said the taillight was cracked.

6 Q The photograph you were shown, with the Court's
7 permission, it's Exhibit 92, I believe from Friday.

8 THE COURT: Okay.

9 MR. JACKSON: May I, your Honor?

10 THE COURT: Yes.

11 Q (By Mr. Jackson) Do you see this photograph? You were
12 shown this photograph on Friday?

13 A Yes.

14 Q Does that look like the taillight has a crack in it?

15 A It's cracked, yes.

16 Q It's actually completely missing, isn't it?

17 A Yeah, and I believe in one of the reports, one of the
18 many reports it will say that I said it was cracked and
19 missing pieces.

20 Q Right, does that look like it's cracked and missing
21 pieces or does that look like the entirety of the taillike
22 is basically gone?

23 A Again, in that picture there are the red pieces. There
24 are some of it still there so it's cracked and missing. In
25 a state of shock that was my description.

1 Q Got it. So in a state of shock you said there was a
2 crack in it?

3 A No.

4 Q Hours after?

5 A I said it was cracked. I never said there was a crack
6 in it.

7 Q So if Trooper Proctor wrote that down that would be an
8 example of him getting your words wrong yet again?

9 MR. LALLY: Objection.

10 Q (By Mr. Jackson) Correct?

11 THE COURT: That's been answered. Let's move
12 on, please.

13 MR. JACKSON: Thank you for that. Thank you,
14 your Honor.

15 THE COURT: Okay.

16 Q (By Mr. Jackson) I want to get back to January 29th,
17 that interview with Trooper Proctor.

18 A Uh-huh.

19 Q After this interview with Michael Lank you eventually
20 made your way back to your house, is that right?

21 A Yes.

22 Q You went with your husband, Matt?

23 A Yes.

24 Q And you knew that Trooper Proctor was going to show up
25 and interview you and Matt, Mr. McCabe, correct?

1 A On the phone he asked, he wanted to speak with me.

2 Q Is that a yes?

3 A So I wasn't aware. He asked to speak with me. I
4 wasn't aware if he was going to speak with Matt.

5 Q Okay. You were at least aware that you were going to
6 be interviewed?

7 A Correct.

8 Q You told Brian Albert that Trooper Proctor was planning
9 on interviewing you, as well?

10 A Correct.

11 Q Before Trooper Proctor showed up to conduct that
12 interview at your house Brian Albert actually showed up at
13 your house, correct?

14 A Correct.

15 Q So Brian Albert made sure that he was in your home
16 before Trooper Proctor made it to your house, correct?

17 MR. LALLY: Objection.

18 THE COURT: Sustained.

19 Q (By Mr. Jackson) Brian Albert was in your home before
20 Trooper Proctor was in your home, is that right?

21 A I am not sure who arrived first.

22 Q But he was there when you were interviewed, wasn't he?

23 A He was upstairs, yes.

24 Q And you believe, of course, that that statement he
25 didn't hear anything about what was going to happen, right?

1 A What --

2 Q He didn't hear anything about the interview?

3 A No, I don't think he could hear it from where he was.

4 Q But you knew he was just a few feet away?

5 A I knew he was up in my bedroom.

6 Q We talked a little bit about your call records and I
7 want to pivot for a second and ask you about those call
8 records. This is Exhibit 90.

9 MR. JACKSON: Your Honor, may I approach?

10 THE COURT: Yes.

11 A Thank you.

12 Q Do you recognize this document?

13 A I do, yes.

14 Q You were shown this document last week, is that right?

15 A Yes.

16 Q This is a forensic extraction report of John O'Keefe's
17 cell phone that you were shown on Friday, right?

18 A Correct.

19 Q You acknowledge that it's an accurate report of calls
20 found on John's phone between you and him, is that right?

21 A I believe so, yes.

22 Q Okay, and this shows calls that you made to John's
23 phone or you received from John's phone at or between 12:14
24 a.m. and 12:50 a.m., I want to direct your attention to
25 those times frames, correct?

1 A Correct.

2 Q I want to start at the bottom and it may go in reverse
3 chronological order.

4 A Okay.

5 Q I think it does. At 12:14 is shows that you called
6 John O'Keefe and that call was answered, is that right?

7 A Yes, correct.

8 Q At 12:18 a.m. it shows that John O'Keefe called your
9 phone and that was answered, as well?

10 A Correct.

11 Q And then at 12:29 a.m. you also called John O'Keefe's
12 phone and you all had a short conversation, as well, is
13 that right?

14 A No.

15 Q The record shows, I think it shows, pardon me, unknown,
16 correct? In terms of whether it was missed or answered?

17 A Excuse me, can you repeat that?

18 Q Sure. At 12:29, I want to concentrate on the 12:29
19 call.

20 A Okay.

21 Q That one in the Cellebrite extraction it shows in terms
22 of whether the call was answered or not the status is
23 unknown, correct? It's on the last page?

24 A Yes.

25 Q Second row from the top?

1 A At 12:29, unknown, yes.

2 Q However, you've already acknowledged that you all had a
3 short conversation on that 12:29 call, correct?

4 A No, we didn't speak at 12:29. We spoke at 12:14 and we
5 spoke at 12:18. We never spoke at 12:29.

6 Q So you're indicating that the 12:29 call was either
7 missed or otherwise, went to voice mail, something?

8 A The 12:29, yes.

9 Q I want to show you a document, well, let me ask it this
10 way. According to this there were six more calls between
11 your phone and John O'Keefe's phone?

12 A Correct.

13 Q Count them, one, two, three, four, five, six and that's
14 up to 12:50, is that right?

15 A Correct.

16 Q I'd like to show you another document.

17 MR. JACKSON: Your Honor, if I could approach
18 briefly? May I?

19 THE COURT: Yes.

20 A Thank you.

21 Q So we don't get them mixed up I'll take Exhibit 90
22 back.

23 A Okay, thank you.

24 Q I want to show you one more document that you weren't
25 shown on Friday. Do you recognize this one?

1 A No.

2 Q Okay, if you look where it indicates on the left
3 column, I'm putting my thumb here, the left column MSISD
4 end user there's a number that ends there?

5 A MSISD?

6 Q Sorry, 0-1-4-2.

7 MR. LALLY: Your Honor, may we approach?

8 THE COURT: Yes.

9 MR. JACKSON: Your Honor, may I get an answer
10 to this question before we approach?

11 THE COURT: I have no idea what we're
12 approaching about, this document?

13 MR. LALLY: Yes.

14 THE COURT: Why don't we just go up there?

15 MR. JACKSON: Sure.

16 THE COURT: May I have that, please. I need
17 to look at it.

18 (Sidebar commences:

19 THE COURT: Oh, excellent. Thank you. Can I give this
20 back to the witness?

21 MR. JACKSON: That one's redacted. This is not.

22 THE COURT: I'm going to give back -- which one am I
23 marking for identification?

24 MR. JACKSON: The redacted one.

1 (Whereupon Exhibit NN, Redacted Document, was marked for
2 identification.)

3 THE COURT: Thank you.

4 end of sidebar.)

5 THE COURT: And, Ms. McCabe, I'm going to give you
6 that. You can (indiscernible).

7 (Sidebar commences:

8 THE COURT: Okay. So do you have a copy, Mr. Lally?

9 MR. LALLY: I do. Not with me.

10 THE COURT: Okay. All right. So --

11 MR. LALLY: My issue, Your Honor, is they've shown it
12 to the witness, asked her if she recognized it, she said
13 no. So then reading from what the document says when it
14 hasn't been authenticated, I don't know what we're doing.

15 MR. JACKSON: Well, I'll tell you what we're doing.
16 This is a little bit of a ridiculous objection.

17 THE COURT: So those commentaries don't advance the
18 ball. So just tell me what this is. Was this --

19 MR. JACKSON: It's her own extraction.

20 THE COURT: Okay.

21 MR. JACKSON: He showed her and authenticated John's
22 extraction.

23 THE COURT: Okay. So --

24 MR. JACKSON: And I'm showing her her own extraction,
25 which is going to be compared to John's extraction, and if

1 we can do this -- we can do this hard way, I can get it
2 done I think.

3 THE COURT: So the ridiculous (indiscernible) doesn't
4 advance the ball. If you had told me first that this is
5 what I saw as an exhibit in the federal grand jury minutes,
6 right, but I reviewed them yesterday.

7 MR. JACKSON: Yes, Your Honor.

8 THE COURT: Okay. She doesn't have to authenticate
9 this, right, but you're going to tell her that it's her
10 phone number or point her to her phone number?

11 MR. JACKSON: I am.

12 THE COURT: My guess is she will. If she doesn't, you
13 can object, and we'll take it from there.

14 MR. JACKSON: So my anticipation was showing her the
15 last four digits of her phone number as it were and I can
16 use the unredacted -- it's the last used (indiscernible)
17 that number, and then the Apple ID is going to be her as
18 well.

19 THE COURT: Okay.

20 MR. JACKSON: I redacted the Apple ID just so I could
21 enter it if I need to, but I can ask the Court to use her -
22 - the Court's unredacted copy just to lay a foundation if
23 need be.

24 MS. LITTLE: I have extra copies as well.

1 THE COURT: Okay. All right. So I'm going to allow this
2 and see where we get.

3 MR. JACKSON: Okay. Thank you.
4 end of sidebar.)

5 MR. JACKSON: Your Honor, just for ease of
6 maintenance may I approach and hand the witness an
7 unredacted version?

8 THE COURT: Yes.

9 THE WITNESS: Thank you.

10 Q (By Mr. Jackson) You're welcome. If you look on the
11 left column, Ms. McCabe --

12 A Yes.

13 Q -- you'll see something that says Apple ID?

14 A Yes.

15 Q Look to the right of it do you recognize that
16 unredacted portion, I don't want you to read it out or
17 anything, do you recognize that?

18 A Yes.

19 Q Whose Apple ID is that?

20 A That's mine.

21 Q If you look six lines below that, there's a full phone
22 number. Again, don't read the phone number out, do you
23 recognize it?

24 A I do.

25 Q Whose is that?

1 A That's mine.

2 MR. JACKSON: May I approach, your Honor?

3 THE COURT: Yes.

4 Q (By Mr. Jackson) I'll take the unredacted copy back --

5 A Okay.

6 Q -- so we don't get it mixed up.

7 A Okay.

8 Q Does this appear to be a Cellebrite extraction of your
9 phone records and your Apple ID?

10 A Yes.

11 Q And you recognize, without telling you what it is, do
12 you recognize that phone number as your phone number back
13 at the time and the Apple ID back at the time?

14 A Yes.

15 Q Associated with the phone that you then turned into law
16 enforcement, correct?

17 A Correct.

18 Q Okay. You've just looked at the extraction report for
19 John O'Keefe's phone and you saw those calls between your
20 phone and John O'Keefe's phone after going from 12:14 after
21 that, all the way up to 12:50, correct?

22 A Correct.

23 Q Take a look at the last couple of pages, page 3 and 4
24 of your own cell phone extraction report and tell me if you

1 see a single call listed between you and John O'Keefe for
2 January 29 between 12:14 and 12:50?

3 A There are calls to a number that I'm assuming is John.

4 Q What number?

5 A I'm just not sure. I see a call, wait a minute. This
6 report has times everywhere.

7 Q Right, it's chronological except for the calls that
8 were deleted. Do you see a call at 5:52 to John O'Keefe's
9 phone?

10 A I see a call at 5:52, yes.

11 Q But there is not a single call before 5:52 a.m. between
12 12:14 and 12:58 a.m., is that right? Not one?

13 A It's very hard to -- this report time-wise.

14 Q You can look at every single time on the report,
15 there's not that many.

16 A Uh-huh. Right, I'm just trying to say that it goes
17 from 7:21 to 5:52 to 7:33, 7:49. They're out of order.

18 Q I understand that Ms. McCabe, but if you look at every
19 one of the entries there's not a single entry for 12:14,
20 12:18 or any of the subsequent 12:29, any of the subsequent
21 phone calls that are all shown on John O'Keefe's cell phone
22 extraction, would you agree with that?

23 A Correct.

24 MR. JACKSON: May I approach?

25 THE COURT: Yes.

1 MR. JACKSON: Thank you. Your Honor, I would
2 move for the admission of NN.

3 THE COURT: Okay, is there an objection?

4 MR. LALLY: No, your Honor.

5

6 (Redacted Extraction Report RE: Jennifer McCabe,
7 Formerly NN for Identification, Marked, Exhibit No. 97.)

8 MR. JACKSON: May I inquire, your Honor?

9 THE COURT: Yes.

10 Q (By Mr. Jackson) The fact of the matter is according
11 to those Cellebrite records and that extraction from your
12 own phone every one of the calls that you made to John
13 O'Keefe's phone between 12:29, I'm sorry, between 12:14 and
14 12:50 a.m. was deleted and unrecovered, correct?

15 A I didn't understand that report and I'm not an expert.

16 Q When you compared the two you saw a bunch of calls on
17 John O'Keefe's phone, right? You know he couldn't have
18 deleted them, he passed away, right?

19 A Correct.

20 Q You saw your cell phone extraction which is the
21 handshake for John O'Keefe's phone and all your calls are
22 missing, right?

23 MR. LALLY: Objection.

24 THE COURT: Can you answer that question?

1 THE WITNESS: I'm confused. That paper, I
2 don't understand it. It was vague. There were numbers.
3 There were calls everywhere. There were a number of
4 missing calls.

5 Q There's a bunch of missing calls, right? You didn't
6 see any of the calls that were reflected on John O'Keefe's
7 phone, is that right, yes or no, they're not there?

8 A A lot of calls are missing. I'm not really even sure
9 what's there because the numbers are all, it's all
10 redacted.

11 Q So you were not seeing any redacted calls?

12 A The page you just had in front of me was redacted.

13 THE COURT: It's now an exhibit.

14 Q (By Mr. Jackson) It's now an exhibit. Your personal
15 information was redacted, none of your calls were redacted,
16 ma'am.

17 A The numbers, I don't know people's phone numbers. I
18 just have them as contacts.

19 Q Ms. McCabe, you just said a second ago, we can do this
20 all day long or we can just make it simple. The fact of
21 the matter is that report did not show any of the calls
22 that John O'Keefe's phone report showed, correct? From
23 12:14, 12:15 --

24 A I believe there was one on there.

25 Q 5:52.

1 A Uh-huh.

2 Q That's the next morning, ma'am, right?

3 A Were there other calls in that time period on
4 Cellebrite?

5 A You just said there weren't, you just looked at them?

6 A I told you that that Cellebrite report was extremely
7 hard to read.

8 Q Right, the fact is there are no calls on your own phone
9 extraction between you and John O'Keefe between 12:14 and
10 12:50, would you just agree with that at last on that
11 report?

12 MR. LALLY: Objection, your Honor.

13 THE COURT: Sustained.

14 Q (By Mr. Jackson) The fact is that you deleted your
15 call records before you turned your phone in, didn't you,
16 Ms. McCabe? That's what that report shows?

17 A Absolutely not.

18 Q You sanitized your phone because you didn't want the
19 police to know who you had been calling or the fact that
20 you had been calling John O'Keefe's phone incessantly,
21 correct?

22 A Incorrect. I willingly turned over my phone.

23 Q After you deleted your phone call log, correct?

24 A Absolutely not.

25 Q What date did you turn your phone over?

1 A Possibly February 3rd.

2 Q How many days after this incident was that?

3 A Four, five.

4 Q So you had plenty of time to talk to that that friends
5 and family group and ultimately decide to delete your phone
6 calls, correct?

7 MR. LALLY: Objection.

8 THE COURT: Sustained.

9 Q Did you ever have any group chats with family members
10 who were witnesses in this case?

11 A Yes.

12 MR. JACKSON: May I approach, your Honor?

13 THE COURT: Yes.

14 Q (By Mr. Jackson) While Mr. Lally is looking through
15 that packet can I just ask to make sure the record is
16 clear, did you delete any of your calls before you turned
17 your phone in to law enforcement?

18 A I spoke with the two officers that I handed my phone
19 over to and I asked if I could delete the personal
20 conversations with my daughters and they said absolutely,
21 yes, that I could.

22 Q So other than calls with your daughters that you
23 deleted did you delete any other calls on your phone at
24 all?

1 A Text messages, it was actually text messages with my
2 daughters that I deleted and that was all I deleted.

3 Q Did you delete any phone calls?

4 A I do not recall deleting any phone calls at all. I
5 would have no reason to delete anything.

6 Q That's very different than I didn't delete any phone
7 calls. I do not remember deleting phone calls means you
8 might have?

9 A In day-to-day life people delete things but I do not
10 recall deleting any phone calls.

11 Q In day-to-day life did you delete any of the calls to
12 John O'Keefe?

13 A No.

14 Q Did you delete any of your calls to Nicole Albert?

15 A No.

16 Q Did you delete any of your calls with Brian Albert?

17 A No.

18 Q With Chris Albert?

19 A No.

20 Q With Julie Albert?

21 A No.

22 Q Colin Albert?

23 A No.

1 Q With any of the witnesses in this case, did you delete
2 any calls before you turned that phone over to law
3 enforcement?

4 A No.

5 MR. JACKSON: May I approach?

6 THE COURT: Yes.

7 Q (By Mr. Jackson) Ms. McCabe, I'm handing you a packet
8 of documents. It appears to be about ten pages long. Do
9 you recognize what's in those documents?

10 A Yes.

11 Q You indicated already that you were part of a group
12 chat with certain members of your family and friends?

13 A Yes.

14 Q Does that group chat, I'm most interested in the group
15 chat between yourself, Nicole Albert, Brian Albert, Matt
16 McCabe, that group chat starting on or around February 1st,
17 2022.

18 A Okay.

19 Q Does that look like a true and accurate reflection of
20 the text messages between or certain of the text messages
21 between and among that group?

22 A Yes, the ones I've seen, yes.

23 THE COURT: Can you just tell me what page
24 you're on? I'm sorry.

25 MR. JACKSON: Of course, your Honor.

1 THE COURT: Or Bates stamp number?

2 MR. JACKSON: 2148.

3 THE COURT: Okay, thank you.

4 MR. JACKSON: Is where it starts and they
5 should go relatively chronologically, your Honor, page by
6 page.

7 THE COURT: Okay.

8 Q (By Mr. Jackson) On February 1, 2022, around 2:15 in
9 the afternoon this group chat did you receive a message
10 from your husband on the group, this is on page 2148, that
11 should be the middle bubble, the middle and the bottom
12 bubble. Quote: Julie said Channel 4 is in DE, do you see
13 that?

14 A Yes.

15 Q And the response from Matt McCabe is, Eating, I assume?
16 Quote: Ask Chris to ask some questions. Tell them the guy
17 never went in the house, end quote. Do you see that?

18 A Yes.

19 Q If you look at the next page at the top, 2149.

20 A Uh-huh.

21 Q There's a one-word answer from Brian Albert.

22 A Uh-huh.

23 Q What is that answer?

24 A Exactly.

1 Q Does it appear to you from this chat that Matt McCabe
2 was directing witnesses, specifically Chris Albert, what to
3 say to the news media?

4 MR. LALLY: Objection.

5 THE COURT: I'll allow that. Is that what
6 you're seeing?

7 A This is not how I would understand this.

8 Q Tell them he never went in the house was a story that
9 had been concocted between and among this group people on
10 this chat, correct?

11 MR. LALLY: Objection.

12 THE COURT: I'll allow that.

13 A No, John never went in the house. It wasn't a story.
14 It was the truth and it is the truth.

15 Q Just like she said, I hit him?

16 A Correct.

17 Q So according to this chat at least at the very base
18 level this is one witness telling another witness to give
19 certain information to the media that could be useful to
20 the group, correct? Tell them the guy never went in the
21 house, right?

22 MR. LALLY: Objection.

23 THE COURT: Sustained.

24 Q (By Mr. Jackson) Matt McCabe was directing Chris
25 Albert and Chris Albert wasn't even at the house, was he?

1 A Chris Albert was not at the house, no.

2 Q But this chat is, I'm sorry, Matt McCabe, your husband,
3 telling Chris Albert he was never at the house and would
4 have no personal knowledge of what happened at the house to
5 specifically say, the guy never came in the house. The
6 guy, by the way, being John O'Keefe, right?

7 A That's what he wrote.

8 Q Does that sound to you a little bit like collusion?

9 MR. LALLY: Objection.

10 THE COURT: Sustained.

11 Q (By Mr. Jackson) At some point you sought out Kerry
12 Roberts' cell phone number shortly after the 29th, or maybe
13 not, maybe on the 29th, correct?

14 A Correct.

15 Q You didn't have her cell number in your phone?

16 A No.

17 Q One of your primary concerns was to make sure that you
18 got in contact with Kerry Roberts before the day's end,
19 right?

20 A I wanted to speak to Kerry as she was on her way to the
21 hospital and I wanted to check in on John.

22 Q One of your primary concerns, Ms. McCabe, was that you
23 wanted to make sure you got a hold of Kerry Roberts and had
24 communication with her before the end of the day?

1 A It had nothing to do with getting in touch with her by
2 the end of the day. It was a friend reaching out wondering
3 how her friend was doing who was just taken off the front
4 lawn.

5 Q On the 29th?

6 A Yes.

7 Q So before the end of the day, Ms. McCabe, and we can do
8 this all day long, before the end of the day you were
9 trying to get a hold of Terry Roberts, correct?

10 A Immediately in the morning I wanted to get in touch
11 with her.

12 Q Right, so you sought out her phone number. First you
13 tried my client, Karen Read, correct?

14 A Correct.

15 Q But then you found another source for that information,
16 is that right?

17 A Correct.

18 Q And you said a second ago you claim that you needed
19 that information because you were, you knew that she was on
20 the way to see John O'Keefe's parents?

21 A She was picking them up.

22 Q And you wanted to check on them?

23 A Correct.

24 Q You've been friends with the O'Keefe family for years,
25 haven't you?

1 A Correct.

2 Q So you didn't have a need to get Kerry Roberts' phone
3 number, did you?

4 A I wanted to speak with Kerry, see how she was doing. I
5 was not going to call Peg.

6 Q You had her phone number, didn't you?

7 A I do, yes.

8 Q So if you wanted to check on somebody you could have
9 just called her?

10 A I was not going to call Peg O'Keefe on the way to see
11 her son at the hospital.

12 Q To check on your friend, that was just too much?

13 A I wanted to ask Kerry. I'm sure she was boggled down
14 and probably did not want to speak with anyone. It was a
15 simple thing.

16 Q You --

17 A I made sure I got Kerry Roberts' number so I could
18 check in and see how John was doing, also we had just been
19 through an extremely traumatic event together. There's
20 nothing evil here.

21 Q You reason wanted Kerry Roberts' number, Ms. McCabe is
22 you wanted to make sure that you controlled her story as
23 she left your sight, correct?

24 A Absolutely not.

1 Q Did you take any steps whatsoever, any steps whatsoever
2 to influence Kerry Roberts' statements?

3 A No.

4 Q Because that would be collusion, wouldn't it?

5 MR. LALLY: Objection.

6 THE COURT: Sustained.

7 Q (By Mr. Jackson) Did you write a text to the group
8 including Nicole Albert, Brian Albert and Matt McCabe where
9 you informed them that quote, and this is, your Honor, on
10 page 2158.

11 Where you informed them quote, Kerry is here.
12 Going over timeline, end quote.

13 A Correct.

14 Q So you reported back to Brian, Nicole and Matt that
15 Kerry was where?

16 A She came over my house.

17 Q And you two sat down and went over a quote, timeline
18 together?

19 A Peggy spoke to Kerry.

20 Q Yes or no, I didn't ask about Peggy.

21 A That's where the timeline started at.

22 Q Did you ask Kerry or did Kerry show up at your house,
23 and quote-unquote go over a timeline?

24 A Kerry showed up asking to sit down with me to do a
25 timeline so we would remember everything that had happened.

1 Q And you wanted to be super helpful about that, right?

2 MR. LALLY: Objection, your Honor.

3 THE COURT: Ask it differently.

4 MR. JACKSON: Sure.

5 Q (By Mr. Jackson) You wanted to be helpful to Kerry
6 Roberts?

7 A The two of us were trying to figure out what had
8 happened to our friend.

9 Q And so you made sure that you created and drafted with
10 Kerry Roberts a timeline, correct?

11 A I didn't make sure of anything. She was the one that
12 asked me to do it.

13 Q Not only did you create a timeline you then reported
14 back to your group, Brian Albert, Nicole Albert, Matt
15 McCabe that she was creating this timeline with you on
16 February 1, 2022, is that right?

17 A Yes.

18 Q After you created or drafted this timeline with Kerry
19 she actually sat for an interview with the police did she
20 not? That's not in the chats. I'm just asking. She sat
21 down for an interview with the police, didn't she?

22 A When?

23 Q You tell me. It's my question.

24 A I'm not sure of when you're talking about.

25 Q Okay. Let's start over.

1 A Yes.

2 Q After the timeline was created on February 1st --

3 A Uh-huh.

4 Q -- at some point thereafter Kerry Roberts conducted a
5 formal interview with the police about this case, correct?

6 A Do you have the report of that date?

7 Q Ms. McCabe, we're sort of burying the lead. He did the
8 interview in your living room, ma'am, right?

9 A There was, on Tuesday two officers came to the house
10 and she sat in the other room and spoke with them.

11 Q So using my question she did the interview at your
12 house, correct?

13 A They came to my house to interview me and she happened
14 to be there so they asked if they could speak with her,
15 also.

16 Q Okay, did she or did she not do an interview at your
17 house?

18 A She did, yes.

19 Q That wasn't that hard. You were present for that
20 interview, weren't you?

21 A I was eating dinner.

22 Q You were present for the interview, Ms. McCabe?

23 A I was in the house, yes.

24 Q And you listened to that interview, didn't you?

25 A No, I did not.

1 Q You made sure you gave Kerry Roberts everything she
2 needed for that interview, correct, quote, everything she
3 might need for the interview, didn't you?

4 A And where is this that you're quoting from?

5 Q I'm asking you.

6 A Oh, I'm sorry. When you quoted I thought it was in
7 here. I apologize.

8 Q We'll get to it in a second. Did you tell her
9 everything that you wanted her to say?

10 A No, I did not.

11 Q Did you in any way attempt to influence her testimony
12 before she gave that interview in your living room?

13 A Absolutely not. Kerry is her own person.

14 Q But then you did report her progress to the Albert and
15 McCabe group in that group chat, didn't you?

16 A Can you show me where, please?

17 Q Sure. Isn't it true that in a group text with Brian
18 Albert, Nicole Albert, Matt McCabe you wrote, and this is
19 on page 2159: Quote: And handed phone to Kerry. Do you
20 remember that?

21 A I see that, yes.

22 Q And the very next text is from you telling the group:
23 She's telling him everything, in all caps, two exclamation
24 points?

25 A Yes.

1 Q And then you went on to say at 2:55 p.m. at basically
2 the same moment: Quote: All the stuff, end quote,
3 correct?

4 A Correct.

5 Q So when you said a couple of minutes ago that you
6 weren't listening to what she was saying that was a lie,
7 wasn't it?

8 A We're talking about two different interviews. I am
9 talking about when the officers came to my house and spoke
10 to her there. You're saying that I handed the phone over
11 so that would be a different interview.

12 Q Ms. McCabe, this is on February 1st at 2:55, I wasn't
13 there, you were there. She was in your house on February
14 1st giving an interview to the police, wasn't she?

15 A One day she was there giving an interview to the
16 police.

17 Q And while she was there --

18 A But I do not believe it was at 2:55. It was later in
19 the evening so I think you might have two events confused.

20 Q But either way whether she was on the phone with the
21 police or sitting there in your living room with the police
22 you were listening to her and reporting back to the group:
23 She's telling them everything, correct?

1 A No, it's not correct. The one that she did with the
2 police she did in the other room and the one that she did
3 on the phone I said she's telling them everything.

4 Q I know --

5 A Because Kerry is an extremely blunt person and she was
6 giving personal feelings about the situation and I was
7 horrified by it.

8 Q To the police?

9 A To the police.

10 Q And you're listening?

11 A I heard a statement she said that horrified me.

12 Q And then you were reporting it back to the group,
13 weren't you?

14 A That one thing she stated I reported back to the group,
15 yes.

16 Q So you're listening in on a police interview, correct?

17 A It was a phone call.

18 Q One side of it, right?

19 A It was a phone call.

20 Q You're listening in on a police interview, one side of
21 it, correct?

22 A Correct.

23 Q You're eavesdropping on that interview, correct?

24 A I'm sitting with her and she's taking the call.

1 Q And then you're reporting that interview back or
2 success in that interview in your mind, back to the group
3 involving Brian Albert, Nicole Albert and Matt McCabe, is
4 that what you're doing?

5 MR. LALLY: Objection.

6 THE COURT: I'll allow it.

7 A Absolutely not. That is not how it went. I was
8 horrified because Kerry is a blunt person, not like me and
9 she had made a comment about Miss Read and Mr. O'Keefe's
10 relationship and I was shocked and horrified that she said
11 it the way that she did.

12 Q You were shocked and horrified that --

13 A I said, Oh, my God, she's telling them everything, yes.

14 Q You decided it was so important that you needed to
15 report that back to Brian Albert and his friends and
16 family?

17 A I was horrified.

18 Q So you reported that back?

19 A Yes, I said she told them everything.

20 Q When you were first confronted with these messages at a
21 separate proceeding in June of 2023 you claimed that you
22 couldn't remember what that exchange was about, correct?

23 A Correct.

1 Q And now you just all of a sudden you have this newfound
2 memory of exactly what that text message was referring to,
3 correct?

4 MR. LALLY: Objection.

5 THE COURT: I'll allow it.

6 A Yes, because Kerry Roberts said a statement and it
7 jogged, I said, oh, my God, that's what I meant when I
8 said, she's telling them everything.

9 Q When did she say this statement?

10 A Probably in the fall. She has made this statement a
11 few times in reference to Karen.

12 Q You and Kerry Roberts are still coordinating your
13 statements together?

14 A Oh, no, we're not. It's just an opinion she has of
15 Miss Read.

16 Q And all of a sudden that became your, quote,
17 everything, all the stuff?

18 A It didn't just become it, forgot that I had written it
19 and one day Kerry made the statement. I'm sure it happens
20 to everyone. You forget something and then you're like Oh,
21 my God, that's what it was.

22 Q I'm not sure that happens to everyone.

23 MR. LALLY: Objection.

24 THE COURT: Sustained.

1 Q (By Mr. Jackson) Let me ask you a different question.
2 When you were asked under oath a year ago when things were
3 fresher in your mind you were asked specifically what you
4 were referring to and your answer was, I have no idea,
5 correct?

6 A Correct.

7 Q Because you didn't want to tell them that you had
8 coordinated your statement with Kerry Roberts, isn't that
9 right?

10 A No, that is not right. I did not remember what it was.

11 Q Went on to be asked specifically, do you know who you
12 were referring to and you said, maybe Kerry, maybe I'm
13 talking to Kerry. And the question was, but you don't
14 recall this text? And your answer was, I don't remember,
15 that's what you testified to a year ago, correct?

16 A Correct.

17 Q But now you're talking about some memory of a
18 disparaging comment that Kerry Roberts has about my client
19 and that's the other thing in your mind?

20 A Yes, the things that she was saying.

21 Q Quote obviously what you were referring to in that text
22 in real time, Ms. McCabe, was that Kerry Roberts was
23 telling the police Quote, Everything that you had laid out
24 for her in this timeline meeting you had with her, correct?

25 MR. LALLY: Objection.

1 THE COURT: So it's sustained as to that form.
2 You can ask that question in a proper way.

3 Q (By Mr. Jackson) The everything you referred to in
4 that text in real time was what you had worked out with
5 Kerry in that timeline meeting, wasn't it? That was the
6 everything that you were referring to, correct?

7 A Incorrect. We never worked together to come up with a
8 story. We have the facts and the everything was a comment
9 about your client.

10 Q You went on in your group chat with Brian Albert,
11 Nicole Albert and Matt McCabe to give running updates about
12 whether or not Kerry Roberts was actually following the
13 script, correct?

14 A Incorrect, there was no script.

15 Q Page 167, Matt McCabe texted the group, Brian, comma,
16 sitting separate, end quote, correct?

17 A Yes.

18 Q It sounds like Matt McCabe in reporting back to Brian
19 Albert following the instructions, we're sitting
20 separately?

21 MR. LALLY: Objection.

22 THE COURT: Sustained.

23 Q (By Mr. Jackson) One minute later Brian Albert had a
24 one-word response to the Brian sitting separate, correct?

25 A Yes.

1 Q What was that one-word response?

2 A Okay.

3 Q So it sounded like he was giving his approval for where
4 people were situated in that meeting, correct?

5 MR. LALLY: Objection.

6 THE COURT: Sustained.

7 Q (By Mr. Jackson) At page 2168 at 5:15.

8 A It's very hard to just look at two texts and try to
9 understand what the context is.

10 Q Ms. McCabe, if you don't understand a question that I
11 have just let me know, but otherwise, just let me ask the
12 question. I'm sorry, on page 2168 at 5:15 you wrote to the
13 group, Quote, You listening, correct?

14 A Yes.

15 Q And at the same time, 5:15 you then wrote, Cops here
16 again, end quote, correct?

17 A Correct.

18 Q That was in reference to the police coming over to your
19 house to further interview Kerry Roberts, wasn't it?

20 A That was when they came to talk to me.

21 Q And Kerry Roberts was there, correct?

22 A At my house, correct.

23 Q And a few minutes later at 5:23 Nicole Albert texts:
24 Call us after, correct?

25 A Correct.

1 Q And a few minutes after that Matt McCabe text quote:
2 This girl could write a book, dot, dot, dot, nonstop,
3 correct?

4 A Correct.

5 Q So obviously Matt McCabe along with you was listening
6 to Kerry Roberts in her interview?

7 A We were sitting in the kitchen eating dinner with our
8 children and Kerry Roberts is in a different room but she
9 was going on and on and on as she does.

10 Q How you know? How do you know?

11 A Because they were in the other room.

12 Q And you could listen?

13 A I could hear voices.

14 Q You could hear her interview with the police?

15 A I could not hear her interview. I could hear them
16 talking but I was sitting at a table with my children
17 eating dinner getting ready to go to a basketball game.

18 Q You then responded to Matt McCabe, I love it, didn't
19 you?

20 A Yes.

21 Q And then you responded about this interview you just
22 testified under oath and under penalty of perjury not
23 hearing anything about, just hearing voices, your next text
24 was, Quote, She is telling them everything?

25 A Yes.

1 Q End quote, correct?

2 A Yes.

3 Q So what you said just a few minutes ago about not
4 knowing what she was saying and just hearing voices that
5 was a lie, wasn't it, Ms. McCabe?

6 MR. LALLY: Objection.

7 THE COURT: Sustained.

8 Q (By Mr. Jackson) And a couple of seconds later Nicole
9 Albert responds one word, what was her response?

10 A Good.

11 Q So in order, those texts say, you listening? You say,
12 you listening?

13 MR. LALLY: Objection, your Honor.

14 Q Cops here again.

15 THE COURT: The objection is sustained.

16 Q (By Mr. Jackson) At the end of the day you were
17 eavesdropping on an interview that Kerry Roberts was having
18 with law enforcement in their official capacity, weren't
19 you?

20 A No, I was sitting eating dinner and some of the things
21 obviously I overheard but I was not eavesdropping.

22 Q Oh, now some of the things you overheard?

23 A I am saying there is a possibility if I'm sitting in
24 this room eating dinner and someone is in another room

1 talking you can hear bits and pieces. Was I eavesdropping,
2 no. Is there some big cover up story, no.

3 Q Well, why, Ms. McCabe, does your story, does your
4 testimony keeps evolving. A second ago you said, you told
5 the jury you said, I couldn't hear a thing. All I could is
6 voices, like muffled voices from the other room. She's
7 going on and on about something?

8 A Yeah.

9 Q And then when I confronted you with a text message
10 where you said, She's telling them everything, now it's,
11 well, I may have heard a couple of things. Which is it?

12 A No, she was going on and on and on like she does.

13 Q And you were listening on and on and on like you do?

14 A I was overhearing hearing bits and pieces.

15 Q Why was it so important to report back to the group
16 that you were happy that Kerry Roberts was saying quote,
17 everything?

18 MR. LALLY: Objection.

19 THE COURT: I'll allow it.

20 A We had both lost our friend. Kerry Roberts was in
21 shock as I was in shock. The two of us had all this
22 information that just kept coming back to us and back to us
23 and it's terrifying when you go through an experience and
24 you're in shock and Kerry was remembering things.

1 I was remembering things so I was happy for her
2 that she was piecing it all together and I had pieced it
3 all together because at the end of the day our friend was
4 dead and we were trying to figure out what had happened to
5 him together.

6 There was no direction. We were all trying to
7 figure out what had happened because that's what you do
8 when you lose somebody that you love.

9 Q Were you happy for her or were you happy for you and
10 Brian and Matt and Nicole?

11 A For me and for her because we were going through this
12 together. There was no convers --

13 Q Because you got the story out that you're trying to get
14 out through Kerry Roberts, correct?

15 MR. LALLY: Objection.

16 THE COURT: I'll allow that.

17 Q (By Mr. Jackson) Is that right?

18 A There is no story. There's facts and truth on this
19 side. There is no story. The story that you've created is
20 not the truth.

21 Q That I created? I hit him, I hit him, I hit him or did
22 you?

23 A That's fact.

1 Q A fact that conveniently you didn't mention in your
2 report to Lank, to Proctor, to the grand jury -- that kind
3 of fact?

4 MR. LALLY: Objection.

5 THE COURT: Overruled.

6 Q (By Mr. Jackson) Is that right?

7 A That is fact I had mentioned, so in some reports it's
8 there.

9 Q The fact is you wanted to keep very close tabs on Kerry
10 Roberts, didn't you?

11 A No.

12 Q On January 29th if you look on page 2223, did you text
13 the group, Quote: Kerry talked to cops and kept it simple,
14 end quote?

15 A Yes.

16 Q Ms. McCabe, it's becoming a habit for you to keep tabs
17 on Kerry Roberts, isn't it?

18 MR. LALLY: Objection.

19 THE COURT: Sustained.

20 Q (By Mr. Jackson) You'll agree that over and over and
21 over and over again you're reporting to this tight group:
22 Nicole, Brian Albert, your husband, how Kerry is doing in
23 her stories to the police, aren't you, over and over and
24 over?

25 A I am telling them --

1 Q Yes or no?

2 A -- what is going on. I wouldn't say, well, let's count
3 them. Was there four of them. You're saying over and over
4 and over and over, it's a bit extreme.

5 Q I see. So you take issue with the way that I phrased
6 over and over and over?

7 A Well, it's misleading, I believe.

8 Q I see. Okay, so let me see if I can try this in a non-
9 misleading way, Ms. McCabe.

10 A Okay.

11 Q So at least one of us, I'll withdraw it. You
12 consistently reported back to the group how Kerry Roberts
13 was doing with the police, didn't you?

14 A I would update them after Kerry saw and spoke to the
15 police. Again, we were all trying to figure out what had
16 happened to John.

17 Q There's yet another text from Brian's wife, Nicole on
18 January 29th and this is on page 2226, and she says, Quote,
19 We'll get more info tomorrow. Don't want to text about it.
20 End quote. And then you texted, Right, correct?

21 A Correct.

22 Q What's that about?

23 MR. LALLY: Objection.

24 THE COURT: I'll allow it.

1 A We decided that we would talk on the phone. My
2 children look on my phone. Her children look on her phone.
3 We were working with the police. I was sharing information
4 in everything that had happened.

5 We didn't want it to leave our little circle
6 because we were trying to figure out what happened and
7 we're not going to go running around letting people see,
8 Oh, my gosh, they think this might have happened or that
9 might have happened. It was nothing more than let's not
10 text about it.

11 Q So you wanted to keep it in your words, in your little
12 circle, correct?

13 A Correct, I didn't want it all out there what we had
14 thought had happened. I was going to let the police do
15 their job.

16 Q So by definition the info that Nicole Albert was
17 talking about, that needed to be kept very tight, very
18 secret, correct?

19 A We needed the police to do their job so we weren't --

20 Q You wanted your text and Nicole wanted her text and the
21 group wanted their text to be kept secret and private,
22 isn't that right?

23 A Not secret and private. We just weren't going to
24 communicate certain things over text.

1 Q Did you give or did anybody give you any private
2 information the next day on January 30th?

3 A Did anyone give me private information?

4 Q Sure, let me put it in context. That text from Nicole
5 Albert, we'll get info, we'll get more info tomorrow. I
6 don't want to text about it. That was on the 29th,
7 right --

8 A Okay.

9 Q -- that you saw? Did you get additional info on the
10 30th, the next day?

11 A I have no idea.

12 Q Did anything significant happen on January 30th in
13 connection with this case, any meetings? Any get-
14 togethers? Anything that you can think of?

15 A I went to the O'Keefe's house.

16 Q Other than that, anything else?

17 A On the way home Kerry Roberts' daughter is good friends
18 with Michael Lank so we dropped her off at Michael Lank's
19 house and Mike's wife came out of the house. Him and Kerry
20 are friends and she, you know, jumped in the car and was
21 consoling Kerry and asks how the O'Keefe's were doing, and
22 you know, we talked to her.

23 Q So you pulled up to Michael Lank's house on the 30th,
24 that's never been reported has it?

25 A I guess I never thought much of it.

1 Q You never thought about reporting the fact that one of
2 the first responding officers on the case working for the
3 Canton P.D. which is conflicted off the case, you had a
4 meeting with, and it wasn't reported the next day?

5 A I didn't meet with Michael Lank.

6 Q I see. You pulled up in the car. Tell me about that
7 again? You pulled up in the car and what happened?

8 A And her daughter went into the house.

9 Q Okay, and then, you just drove away?

10 A No, Michael's wife came out of the house.

11 Q Okay, and you all had a conversation about what?

12 A She got in the car and her and Kerry are friends and
13 she was checking on Kerry, and you know, just saying Oh, my
14 God, this is so crazy, you know, just checking in on the
15 O'Keefe's.

16 Q How long did that take?

17 A Kerry is a talker so it could have been an hour.

18 Q It could have been an hour standing outside?

19 A Sitting in the car.

20 Q Sitting in the car on February 30th, never came in the
21 house?

22 A Not February 30th.

23 Q I'm sorry, I said February 30, January 30, never went
24 in the house?

25 A I might have ran in to go to the bathroom.

1 Q It's the back end of a blizzard, it's freezing cold
2 outside?

3 A Uh-huh.

4 Q Sitting in the car for an hour?

5 A The car was running. Kerry, they were talking. It's
6 her friend.

7 Q Did you have any conversation before your testimony
8 today with anybody about you going to Michael Lank's house
9 on January 30, anybody?

10 A Yes.

11 Q Tell me about that. Who was it and when?

12 A It was a couple of weeks ago at the DA's office.

13 Q The DA's office had an interview with you, correct?

14 A Not an interview. They just explained this process.

15 Q I mean, a conversation, how about that?

16 A Yes.

17 Q You met with the DA's office, who did you meet with?

18 A Mr. Lally, Ms. McLaughlin, Steven Nelson, Trooper Brian
19 Tully, I believe, oh, and another woman. I can't remember
20 her name, unfortunately.

21 Q Someone from the DA's office?

22 A Yes.

23 Q Beland?

24 A No.

25 Q Lynne Beland?

1 A No, she's here today. She works with Steve Nelson.

2 Q Oh, but an employee of the DA's office?

3 A Yes.

4 Q It sounds like a pretty big meeting?

5 A I wouldn't call it a big meeting. It was what, five of
6 them.

7 Q Five of them and then you, right?

8 A My daughter Ally came with me, also.

9 Q The meeting is getting bigger? Anybody else?

10 A No, we both went.

11 Q Was Ally in the room when you were, I was going to say
12 interviewed but you take issue with every word I use, when
13 you were talked to by the DA?

14 A Ally and I were both in the room when they received,
15 when they went over everything, you know, how this all
16 works because this is all brand new to us and then they
17 asked me to leave the room.

18 Q You were about to say and I lost the end of that
19 sentence, when they received what?

20 A I didn't mean the word received.

21 Q Did you receive anything?

22 A No, I looked at my grand jury notes.

23 Q Now at this meeting was anybody taking notes?

24 A No.

1 Q You have a bunch of lawyers and the DA and nobody has a
2 notepad in front of them, like notes?

3 A I believe Mr. Lally had a number of folders on the
4 table.

5 Q Taking notes?

6 A No, I do not believe anyone was taking notes. It was a
7 casual meeting to explain this process.

8 Q Was that meeting recorded in any way that you're aware
9 of?

10 A No.

11 Q How long did the meeting last?

12 A Ally and I were probably in the room, I don't know,
13 approximately twenty minutes, then I left and they spoke
14 with her and then I went back in and they spoke with me.

15 Q How long did they speak with you?

16 A Honestly, maybe a half hour, hour.

17 Q During that half hour to an hour did they go over with
18 you what they expected your testimony to be?

19 A They never spoke about what they expected my testimony
20 to be. They just showed me some pictures that might be
21 shown. I listened to the 911.

22 Q What pictures?

23 A Just of the house and how I'd be asked to you know,
24 show, okay, we're going to show a picture of the house,
25 you'll have a laser.

1 Q Ms. McCabe, when you started this conversation it was
2 because you said in answer to my question, was anything
3 ever brought up to you about this meeting at Mike's house.

4 A Uh-huh.

5 Q You said yes.

6 A Uh-huh.

7 Q So obviously they did talk to you about your testimony,
8 it wasn't just about the process, correct?

9 A I asked what discovery had been turned in in regard to
10 me.

11 Q So you wanted to prepare to make sure that you knew
12 what you might be asked on cross-examination, correct?

13 A I wanted to know what was coming, yes.

14 Q And you knew that one of the things that was coming
15 after this meet, well, let me ask it a different way.

16 During this meeting did Mr. Lally tell you that
17 one of the things that's going to be coming is you had an
18 off the books meeting at Lank's house for 45 minutes, did
19 he tell you that?

20 A No, that's not how I was told.

21 Q Did he tell you that the defense had uncovered a report
22 that established that you were actually at Michael Lank's
23 house for 45 minutes that had never been reported to the
24 defense or the prosecution before the phone extraction had
25 been done, did he tell you that?

1 A I was told, I was asked, oh, were you at Michael Lank's
2 on the 30th.

3 Q So you had a lot of time to come up with a story about
4 why you were at Michael Lank's, correct?

5 MR. LALLY: Objection.

6 THE COURT: I'll allow it.

7 A I didn't need time to make up a story because I have
8 the truth of why we went.

9 Q And the truth according to you is you pulled up at
10 Michael Lank's house, the first responding officer and
11 friend of the Alberts, had a meeting with him the next day
12 that was never reported to anybody for any purpose?

13 A I --

14 Q You just met with his wife out in the car while the car
15 was running for 45 minutes to an hour, that's your story?

16 A It's not a story. It's the truth. Kerry dropped her
17 daughter off. The wife came out. Kerry is a talker. They
18 started talking. A tragedy had happened the day before.

19 Q It is interesting, would you not agree, that the day
20 before you have this off the books meeting at Michael
21 Lank's house Nicole Albert says, we'll get more info
22 tomorrow, meaning the very day you show up at Lank's house?

23 A Again, I never spoke with Mike Lank at his house. It
24 was not an off the books meeting. It was Kerry dropping
25 her daughter at one of her good friend's house whose

1 husband happens to be a Canton cop. That is what it is.
2 That is the truth.

3 Q And a large coincidence, you'd agree?

4 MR. LALLY: Objection.

5 THE COURT: Sustained.

6 MR. JACKSON: May I have just a moment, your
7 Honor?

8 THE COURT: Yes.

9 Q (By Mr. Jackson) By the way, what did Mr. Lally show
10 you in respect to this issue about this meeting at Michael
11 Lank's house?

12 A He showed me nothing.

13 Q He just told you about it?

14 A Brian Tully told me.

15 Q Okay, what did Mr. Tully tell you, if you recall, what
16 exactly did he tell you about this meeting about this
17 Michael Lank issue?

18 A He said, Did you go to Michael Lank's on January 30th,
19 and at first I said, No, I've never been to his house.
20 Then I thought about it and I said, Oh, my gosh, yes, I did
21 go there and that was the extent of the conversation.

22 Q You said, Yeah, I did go there and he didn't ask a
23 follow-up like what the heck were you doing at Michael
24 Lank's house that day after this issue, this incident?

25 MR. LALLY: Objection.

1 THE COURT: I'll allow it.

2 Q (By Mr. Jackson) He didn't ask a follow-up to that?

3 A I do not believe he did.

4 Q So, Trooper Tully had you come down for an interview.
5 He confronted you with a fact that had never been disclosed
6 before, to wit, you showed up at Michael Lank's house and
7 when you said, Yeah, Oh, yeah, hang on, I think your words
8 were, Oh, my gosh, yeah, I think I did go there, and he
9 didn't ask a follow-up question?

10 A He was there.

11 Q Yes or no?

12 A You're spinning all of this.

13 Q Ma'am, I do a lot of things.

14 A Yeah.

15 Q I don't spin. There's a judge here to make sure I
16 don't spin. I'm asking you a question. It's very direct.

17 A I do not believe he asked me a follow-up question.

18 Q So that was the end of that conversation about Michael
19 Lank, correct?

20 A Correct.

21 Q Mr. Lally didn't have any follow-up questions?

22 A I don't believe Mr. Lally was in the room.

23 Q I thought you said Mr. Lally, Ms. McLaughlin?

24 A They were. They might have not been in the room at
25 that time.

1 Q I see. So Mr. Lally just happened to what, just
2 saunter out?

3 A It was a different time.

4 Q So Mr. Lally was in and out of the conversation?

5 A Mr. Lally was not there when this conversation
6 happened.

7 Q Well, why is that?

8 A Because I met with Brian Tully and he was not there.

9 Q Did Brian Tully take any notes?

10 A No.

11 Q He's a state trooper interviewing the witness and he --

12 A He was --

13 MR. LALLY: Objection.

14 THE COURT: Sustained.

15 Q (By Mr. Jackson) The same report that has you at
16 Michael Lank's house --

17 A Uh-huh.

18 Q -- also has you picking up Nicole Albert going by 34
19 Fairview just before you went to Michael Lank's house, are
20 you aware of that?

21 A We did not pick up Nicole Albert.

22 Q So you went by 34 Fairview, then diverted, and right
23 after you went by 34 Fairview went directly over to Michael
24 Lank's house, what was the reason you stopped by 34
25 Fairview first?

1 A We didn't stop by. Maybe Kerry slowed down by we did
2 not stop by 34.

3 Q You did a drive by at 34 Fairview, for giggles? What?

4 A No, that's how we get to Michael Lank's house.

5 Q If the report shows that you actually stopped at 34
6 Fairview and then went to Michael Lank's house, did we have
7 another, oh, my gosh moment?

8 A No, no oh, my gosh moment. We did not pick up Nicole
9 Albert.

10 Q Did anybody else go with you to Michael Lank's house?

11 A No, it was Kerry, myself and her daughter.

12 MR. JACKSON: Your Honor, may we approach
13 briefly?

14 THE COURT: Okay.

15 (Sidebar commences:

16 MR. JACKSON: I'm going to move into a different
17 subject. I was thinking this might be as good a time as
18 any to break.

19 THE COURT: All right. How much longer do you think
20 you'll have with her?

21 MR. JACKSON: Do you know what page number it is?

22 MS. LITTLE: You probably have another hour.

23 MR. JACKSON: I would think at least an hour.

24 THE COURT: Okay. Who's tomorrow? Can you do ten
25 minutes?

1 MR. JACKSON: Sure, I can.

2 THE COURT: Yeah, why don't we go right up to one
3 o'clock.

4 MR. JACKSON: Absolutely.
5 end of sidebar.)

6 THE COURT: Jurors, we're going to try and go
7 right up until 1:00 o'clock, okay?

8 Q (By Mr. Jackson) Ms. McCabe, we've talked in some
9 detail about your calls with John O'Keefe on the morning of
10 January 29th, do you recall that conversation?

11 A Yes.

12 Q I want to focus your attention at or about 12:14 a.m.
13 moving up to about 12:50 a.m., do you have that time in
14 mind?

15 A Yes.

16 Q You've seen the Cellebrite extraction from John
17 O'Keefe's phone which Mr. Lally showed you the other day,
18 correct?

19 A Correct.

20 Q And you went through the series of phone calls that
21 were made that appear on his extraction report, correct?

22 A Correct.

23 Q I just want to run through those very time-wise very
24 quickly just to orient you if I can and then I'll ask you

1 some specific questions about it. There was a call at
2 12:14 a.m., correct?

3 A Correct.

4 Q That was a call that you indicated was answered, you
5 had conversation with Mr. O'Keefe?

6 A Correct.

7 Q That was a call at 12:18 and 47 seconds, that call also
8 was answered by you. John O'Keefe made that phone call,
9 correct?

10 A Correct.

11 Q Then there's the 12:29 and 44 second call that you
12 indicated was not answered?

13 A Correct.

14 Q And that was a call from you to him?

15 A Correct.

16 Q There was a 12:41 call from you to John O'Keefe,
17 correct?

18 A Correct.

19 Q There was a 12:41 and 54 second call from you to him,
20 is that right?

21 A Correct.

22 Q There was a 12:43 and 19 second call from you to him?

23 A Correct.

24 Q 12:46 a.m. and 16 seconds from you to him?

25 A Correct.

1 Q 12:47 and 52 seconds from you to him?

2 A Correct.

3 Q And 12:50 and 37 seconds from you to him?

4 A Correct.

5 Q You saw in his extraction report that all of those
6 calls after 12:18 were missed calls, correct?

7 A In his report that you showed me?

8 Q Correct, in other words, the only two calls that were
9 answered were the 12:14 and 12:18, everything else was a
10 missed call?

11 A I believe so. I would have to refer to it again
12 because I've seen so many reports.

13 Q And Ms. McCabe, according to the extraction report that
14 you've seen this morning comparing yours to his, every
15 single one of those calls was deleted off your phone,
16 correct, according to the reports?

17 A According to that report, yes.

18 Q Let me ask you another question, have you ever
19 misplaced your phone?

20 A Yes.

21 Q In fact, everybody does, right?

22 A Yes.

23 Q What is one of the first things you do with your
24 daughter or your husband or a friend in your house when you
25 misplace your phone, what do you do?

1 A I'll ask them to call my phone.

2 Q Right, even over and over and over, right?

3 A Correct.

4 Q It could be as many as five, six, seven times?

5 A Usually I hear it the first or second time.

6 Q You're looking for a buzz or a ring, isn't that right?

7 A Correct.

8 Q And you might do that if you're searching for a missing
9 phone, correct?

10 A Correct.

11 Q With regard to the calls that were deleted in your
12 phone you were asked about this under oath at another
13 proceeding, weren't you?

14 A Correct.

15 Q And you claimed at another proceeding that you had an
16 explanation for all these missed calls starting at 12:29,
17 12:41, 12:41, 12:43, 12:46, 12:47, 12:50, you have an
18 explanation for that, right?

19 A Can I see the report?

20 Q I'm asking you about your prior testimony?

21 A Am I'm ask --

22 Q About these calls --

23 A Yes, and I'm asking, can I see it, please.

24 Q I'm asking you a different question. At this other
25 proceeding --

1 A Uh-huh.

2 Q -- you were under oath?

3 A Yes.

4 Q You explained that these calls were, what, were missed
5 calls, incessant missed calls, what were they, you used the
6 word, as a matter of fact it's two words?

7 A I believe I used the word butt dial.

8 Q You claimed that every one of these calls was a butt
9 dial, is that right?

10 A Yes.

11 Q So according to you, you literally butt dialed John
12 O'Keefe's phone six times in a span of nineteen minutes, is
13 that right?

14 A I don't remember making any of those calls so my
15 assumption is I put my phone in my back pocket and that was
16 it.

17 Q When you dial someone by mistake and hit a button, set
18 your phone down, the phone has to be open you'll agree with
19 that, right?

20 A Correct.

21 Q It can't be locked because it takes several iterations
22 of movement to get a phone open, Face ID or password,
23 right?

24 A Correct.

1 Q So when you hit the button by mistake, walk away,
2 that's a butt dial, what people call butt dials, what
3 happens with the call?

4 A I assume it goes to voice mail.

5 Q That's a good assumption because that's exactly what it
6 does, doesn't it? You've had a phone for a lot of years,
7 right?

8 A Yes.

9 Q It rings and rings and rings until it goes to voice
10 mail?

11 A Correct.

12 Q So in order to hang up that butt dial you have to
13 interact with that phone yet again, don't you?

14 A Yes.

15 Q So if you had six butt dials, correct, wait seven but
16 dials, you'd not only have to interact with the phone once
17 to butt dial John, you'd then have to interact with it
18 every single time to turn off that phone ringer so it
19 doesn't go to voice mail, wouldn't you?

20 A I suppose.

21 Q Which makes fifteen interfaces with that phone over the
22 course of nineteen minutes, is that right?

23 A I mean, I guess. I don't have it all right in front of
24 me but there were also text messages I was sending so

1 again, maybe I said, Oh, shoot, I called him and then I
2 turned it off.

3 Q But your claim is you don't remember those incessant
4 butt dials and those incessant hang ups at all, correct?

5 A I honestly don't.

6 Q So you would have had to forget that you interacted
7 with that phone, by the way, you'll agree that the phone
8 extraction shows John got no voice mails from you, correct?

9 A I didn't look.

10 Q So that means you would have had to interact with that
11 phone fourteen times over the course of nineteen minutes at
12 the exact timeframe that the Commonwealth suggests John
13 O'Keefe lost his life?

14 MR. LALLY: Objection.

15 THE COURT: Sustained. You can ask that
16 differently and this will be your last question for today,
17 please.

18 MR. JACKSON: Yes, your Honor.

19 Q (By Mr. Jackson) The period between 12:29 and 12:50
20 which is the exact period that you were Quote, butt dialing
21 John multiple times that's also the exact period that John
22 O'Keefe was rendered incapacitated, is that correct?

23 MR. LALLY: Objection.

24 THE COURT: That's sustained. We'll start up
25 again tomorrow, okay?

1 MR. JACKSON: Thank you.

2 THE COURT: All right. So, jurors, please do not
3 discuss this case with anyone. Don't do any independent
4 research or investigation into the case. If you happen to
5 see, hear, or read anything about the case, please
6 disregard it.

7 Now, tomorrow will be a full day. The forecast is it's
8 going to be very hot. You'll see this courtroom
9 fluctuates. It could be really cold in here. It could be
10 really hot in here, so maybe bring a sweater or something.
11 All right. We'll see you tomorrow. Thank you.

12 (Jury out.)

13 THE COURT: Mr. Jackson, I don't know if this is yours.

14 MR. JACKSON: May I approach?

15 THE COURT: Yes. Mr. Lally, who else do you have
16 tomorrow?

17 MR. LALLY: So Ms. Roberts would be next, Laura
18 Sullivan, Marietta Sullivan, and then I think it would be
19 Mr. Higgins after that.

20 THE COURT: (Indiscernible.)

21 MR. LALLY: Probably not.

22 THE COURT: All right. Thank you very much. We'll see
23 you in the morning.

24 (Court in recess.)

25

C E R T I F I C A T I O N

I, CHRISTINE D. BLANKENSHIP, NOTARY PUBLIC, DO HEREBY
CERTIFY THAT THE FOREGOING IS A TRUE AND ACCURATE
TRANSCRIPT FROM THE RECORD OF THE COURT PROCEEDINGS IN THE
ABOVE-ENTITLED MATTER.

I, CHRISTINE D. BLANKENSHIP, FURTHER CERTIFY THAT I
NEITHER AM COUNSEL FOR, RELATED TO, NOR EMPLOYED BY ANY OF
THE PARTIES TO THE ACTION IN WHICH THIS HEARING WAS TAKEN,
AND FURTHER THAT I AM NOT FINANCIALLY NOR OTHERWISE
INTERESTED IN THE OUTCOME OF THIS ACTION.

Christine D. Blankenship, February 3, 2025

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